# SULLIVAN'S JUDICIAL PROFILES

## Federal

7th U.S. Circuit Court of Appeals

U.S. District Court

U.S. Bankruptcy Court

## State of Illinois

Supreme Court

Appellate Court

Circuit Courts

Compiled from Biographies, Research,
Chicago Daily Law Bulletin stories,
Chicago Lawyer stories,
Appellate Opinions and the
Jury Verdict Reporters.



Law Bulletin Publishing Company
415 North State Street
Chicago, Illinois 60610

312 644 7800

## Jeffrey B. Ford

**Judge 6th Judicial Circuit Court**
**Champaign County Courthouse, 101 East Main Street, Urbana, 61801**
**217-384-1292**

**Professional Experience**
Adjunct professor, University of Illinois Police Training Institute.

**Legal Experience**
Admitted to Illinois Bar 1976. Immediately prior to becoming a judge, he was engaged in private legal practice with Meyer, Capel, Hirschfeld, Muncy, Jahn & Aldeen in Champaign, IL. He previously worked as an assistant Champaign County state's attorney and in private practice with the firm of McClellan & Langan.

**Judicial Experience**
In 1985, Ford joined the 6th Judicial Circuit Court as an associate judge. In 2005, he was appointed a Circuit Court judge to fill the vacancy created by the retirement of Judge John G. Townsend. Ford will sit as the resident Circuit Court Judge in Champaign County. His appointment ends Dec. 4, 2006.

**Organizations**
American Bar Association.

**Family**
Judge Ford was born in 1951.

**Education**
Undergraduate: University of Illinois, 1973, B.S., Major: Psychology
Law School: University of Illinois College of Law, 1976, J.D.

**Civic**
Illinois Department of Transportation's DUI Advisory Council; Alcohol and Other Drug Network in Champaign County; Illinois Association of Drug Court Professionals: Board member.

**Appellate Summary References**
08/19/04 Criminal law and procedure: plea agreements.

## Nicholas R. Ford

**Judge Circuit Court of Cook County Criminal Division**
**Criminal Court Building, 2600 South California Avenue, Chicago, 60608**
**773-869-7437**

**Legal Experience**
Admitted to Illinois Bar 1988. 1988-98, assistant state's attorney, Cook County (assignments included appeals and narcotics).

**Judicial Experience**
In January 1998, Ford was appointed to the Circuit Court of Cook County, filling the vacancy created by the death of Judge Willard Lassers. His term of office ran from January 2 through December 7, 1998. He was elected to a full six-year term in November 1998. He initially served in the 1st Municipal District Traffic Court. He later joined the Felony Section of the 1st Municipal District. He served in the Felony Preliminary Hearing Section prior to his current assignment to the Criminal Division in 2003. He was retained for another six-year term in 2004.

**Organizations**
Chicago Bar Association; Illinois State Bar Association; Illinois Trial Lawyers Association.

**Family**
Judge Ford was born in 1963. He is married to Callie Baird, chief administrator of the Chicago Police Department Office of Professional Standards. He has one daughter, Hannah.

**Education**
Undergraduate: Loyola University of Chicago
Law School: University of Iowa College of Law, 1988

**Civic**
Judge Ford has worked with children as a tutor at the St. Joseph's Church grade school for the past 11 years. He has also volunteered for the past 11 years, between October and May, at the

Judicial Profile continued for Nicholas R. Ford

Lincoln Park Community Shelter for the homeless, where he is an overnight supervisor two nights a week.

**Additional Information**

Hobbies: hunting, fishing, basketball, bicycling and Cubs baseball.
Political affiliation: Democrat.

## Fred Foreman

**Judge 19th Judicial Circuit Court (Lake) Felony Division**
**Lake County Courthouse, 18 North County Street, Waukegan, 60085**
**847-377-3600**

**Professional Experience**

1982-90, faculty, National College of District Attorneys, University of Houston, Texas.

**Legal Experience**

Admitted to Illinois Bar 1974, admitted to Wisconsin Bar 1997. Before becoming a judge, Foreman was in private practice with the firm of Freeborn & Peters in Chicago. He had previously served as a U.S. Attorney for the Northern District of Illinois (1990-93), the Lake County State's Attorney (1980-90) and as a special assistant Illinois attorney general. He began his legal career as an assistant Lake County public defender.

**Judicial Experience**

Foreman was elected a Lake County Circuit Court judge in 2004 and was assigned to a felony trial call.

**Organizations**

Chicago Bar Association; Illinois State Bar Association; American Bar Association; Federal Bar Association; Illinois State's Attorneys Association: president (1987-88); National District Attorneys Association: Board chair (1989-90), president (1988-89).

**Family**

Judge Foreman was born in 1948.

**Education**

High School: Warren Township High School, Gurnee, IL, 1966
Undergraduate: Carroll College, 1971, B.S./B.A.
Law School: John Marshall Law School, 1974, J.D.

**Civic**

Military: United States Air Force, 1966-72

## James L. Foreman

**Senior Judge U.S. District Court Southern District of Illinois**
**U.S. Courthouse, 301 West Main Street, Benton, 62812**
**618-439-3719**

**Legal Experience**

Admitted to Illinois Bar 1952. 1952-55, sole practitioner (Metropolis, IL); 1955-72, private practice, Chase & Foreman (Metropolis); 1960-64, state's attorney, Massac County, IL; 1968-72, Assistant Illinois Attorney General.

**Judicial Experience**

President Richard Nixon appointed Foreman to the U.S. District Court in 1972. Judge Foreman has served on the U.S. District Court for the Southern District of Illinois for 33 years, including 13 years as the chief judge. He assumed senior status in 1992.

**Publications/Seminars**

Speaker, "Back to Basics: Federal Practice," ISBA Special Committee on Federal Practice, 2002.

**Awards**

In May 1997, Judge Foreman was honored on his 70th birthday for 25 years on the bench of the U.S. District Court for the Southern District of Illinois. He was given a plaque and prints of the East St. Louis and Benton courthouses by his current and former law clerks. In 2002, he was

*Foreman*.

Masthead Logo

**DePaul Journal for Social Justice**

Volume 9
Issue 2 *Summer 2016*

Article 3

August 2016

# How and Why A Code of Silence Between State's Attorneys and Police Officers Resulted in Unprosecuted Torture

Elliott Riebman
*DePaul University College of Law*

# HOW AND WHY A CODE OF SILENCE BETWEEN STATE'S ATTORNEYS AND POLICE OFFICERS RESULTED IN UNPROSECUTED TORTURE

*Elliott Riebman*

## INTRODUCTION

Beginning in the early 1970s, and spanning two decades, more than 110 African American suspects were systematically tortured by fifteen Chicago police officers all of whom were white.[1] Lieutenant Jon Burge was the commanding officer of all of the perpetrators.[2] Although these officers were protected from prosecution by the code of silence, the culture they created in the Chicago Police Department (CPD) festers to this day, as was recently on display in the Laquan McDonald case.[3]

In May 2006, special prosecutors in the Cook County State's Attorney's Office (CCSAO) (hereinafter the "Special Prosecutors") released a report that followed a four-year investigation into claims against Burge and his officers. The report indicated that 150 people were tortured in the Violent Crimes Unit known as Area 2 on Chicago's South Side.[4] After two years, and more than 700 interviews, the Special Prosecutors concluded that there was credible evidence in 148 of the complaints. However, they could only prove three of these cases beyond a reasonable doubt.[5] The Report also found credible evidence of abuse in about half of the 148 complaints that they had thoroughly investigated.[6]

---

[1] Susan Bandes, *Patterns of Injustice: Police Brutality in the Courts*, 47 BUFF. L. REV. 1275, 1288 (1999) (citing *see, e.g., United States ex rel Maxwell v. Gilmore*, 37 F.Supp.2d 1078, 1094 (N.D. Ill. 1999)); G. F. Taylor, *A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases*, 17 PUB. INTEREST L. RPTR. 178, 183 (2012) (provides a thorough and detailed history of Chicago police torture involving Jon Burge and Area 2). Available at: http://lawecommons.luc.edu/pilr/vol17/iss3/3.

[2] Taylor, *supra* note 1, at 180.

[3] Clarence Page, *Is the 'Chicago Way' a kill-and-cover-up Culture?*, CHICAGO TRIBUNE, November 27, 2015, *available at* http://my.chicagotribune.com/#section/-1/article/p2p-85166578/.

[4] *See* Robert Boyle & Edward Egan, *Report of the Special State's Attorney* (2006), http://www.aele.org/law/2006LROCT/chicagoreport.pdf.

[5] *See id.*

[6] *See id.*

Unfortunately, these findings came 30 years too late, after the statute of limitations had lapsed.[7]

Many are inclined to dismiss the torture in Area 2 as unusual, anecdotal, and unrepresentative.[8] However, in light of the recent investigations into police abuse, it is worth reexamining the practices of Area 2. One can clearly see that the chain of command between the CPD and the CCSAO of the 1970s and early 1980s either broke down or never properly existed. The collusion between police officers and prosecutors through relentless efforts to obtain illegal confessions may have resulted in a tacit unwritten protocol; 'the ends justify the means'.[9] This mentality corrodes core legal principles such as habeas corpus, and results in deeply troubling miscarriages of justice that continue in Cook County today.

Area 2 still symbolizes failed governmental accountability. This precinct foreshadowed cases of police abuse, misconduct, and a broadly accepted code of silence amongst the CPD, the CCSAO, and Cook County judges that resurfaced in the case of Laquan McDonald.[10]

This article will focus on the torture in Area 2 and its aftermath as it unfolded in Chicago's courtrooms and government offices. It will analyze the alleged cover-up by the CPD and CCSAO. Further, it will profile individuals involved in Andrew Wilson's case, such as Police Superintendent Brzeczek and several Assistant State's Attorney's (ASAs).[11] Once cases of torture and confirmed medical reports surfaced the responsibility to take action laid with former Mayor Richard M. Daley, the head of the CCSAO at the time of the release of the reports. Richard Devine, Mayor Daley's first ASA and later the head of the CCSAO, was also directly involved in deciding how to deal with Area 2 and the

---

[7] *See id.* at 18. The Illinois statute of limitations bars initiating prosecution of felonies more than three years after the commission of the crime. *See id.*

[8] Bandes, *supra* note 1, at 1278.

[12] *See* KEVIN DAVIS, DEFENDING THE DAMNED: INSIDE CHICAGO'S COOK COUNTY PUBLIC DEFENDERS OFFICE 101 (Atria 2007) (quoting Andrea Lyons) (in other words, do whatever necessary to get a confession if it puts the bad guy in jail).

[10] Don Babwin, *Chicago teen's death shines light on police code of silence*, Associated Press, Feb. 8, 2016, http://www.salon.com/2016/02/08/chicago_teens_death_shines_light_on_police_code_of_silence/.

confirmed torture allegations once the first official torture allegations were confirmed.[12]

In Chicago, collusion between police officers and lawyers is nothing new under the sun; in fact, the history of organized crime and corrupt politics traces back almost 100 years.[13] The history of police and judicial corruption in Chicago traces back almost 100 years. As early as 1957, *Life* magazine described CPD as the most corrupt in the nation.[14] In 1960, Walter Spirko, a Chicago reporter, exposed a police burglary ring known as the "Summerdale Scandal" that led to some reforms. However, despite these efforts an atmosphere of corruption remained prevalent into the 1970s.[15]

Before examining what motivated those individuals involved in Area 2, it is important to understand the environment they worked in at the time—Chicago's south side in the 1970s—and its demographics. The neighborhood population near Area 2 was overwhelmingly poor and black. In surrounding neighborhoods, rumors abounded that police officers had tortured people there for years. However, no official complaints were filed until the early 1970s.[16] Torture allegations came from unconnected sources, and most complaints alleged similar acts perpetrated by the same unit and same men.[17] However, no official complaints were filed until the early 1970s. Despite the allegations against Area 2, the Office of Professional Standards (OPS), an internal agency of CPD, failed to investigate the complaints until 1990.[18] Jon Burge remained in charge at Area 2 until he was terminated in 1993. After complaints were finally investigated and verified, no criminal proceedings were instituted against either Burge or those

---

[12] *Id.* at 119-20.

[13] For a history of corruption within the Chicago Police Department (warts and all), *see* RICHARD LINDBERG, TO SERVE AND COLLECT: CHICAGO POLITICS AND POLICE CORRUPTION FROM THE LAGER BEER RIOT TO THE SUMMERDALE SCANDAL (Praeger 1991) (discussing the tie between politics, organized crime, vice, and the police department and revealing how police corruption in Chicago was the result of political drag on the department).

[14] John Conroy, *The Good Cop*, CHICAGO READER, January 5, 2007, *available at* http://www.chicagoreader.com/features/stories/goodcop/.

[15] *See id.*

[16] *See* Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States* 155 (1998), *available at* http://www.hrw.org/reports98/police/.

[17] Bandes, *supra* note 1, at 1288-89.

[22] *Id.* at 1289. The OPS report found systemic torture had been occurring in Area 2 until 1992; however, Mayor Daley condemned the report and the city suppressed its findings. *Id.* at 1301-02.

officers in Area 2 because the statute of limitations had run; Burge remained in charge of Area 2 until he was fired in 1993.[19] According to the Special Prosecutors' Report, prosecutors could bring only a single indictable offense against Police Superintendent Brzeczek for "dereliction of duty." Mr. Brzeczek had actual knowledge of torture at the time it occurred, he failed to take appropriate steps to inform the CCSAO, or to initiate an investigation into Area 2.[20] Instead, all Mr. Brzeczek did was send Mayor Daley a letter explaining that abuse had occurred, and it could be corroborated with medical documentation.[21] Mr. Brzeczek stated in the letter that he would not investigate Wilson's alleged torture unless Daley directed him to do so.[22] Mr. Brzeczek never heard back from former Mayor Daley and no further action was taken.

A rational jury could have inferred that Mr. Brzeczek knew Area 2 officers were prone to beating up suspected cop killers, the Seventh Circuit found that "failing to eliminate a practice cannot be equated to approving it."[23] The court found that Mr. Brzeczek could only be found guilty of dereliction of duty; however, insufficient grounds for civil liability existed to pursue this charge. Some of the people victimized in Area 2 have brought civil cases against the officers and the city; however, the evidentiary rule, which excludes prior acts of brutality, bars almost all findings of municipal liability.[24]

There has been very little community outrage over the torture in Area 2. For whatever reason, the story never garnered enough notoriety necessary to trigger public uproar.[25] Some hoped

---

[19] *See In the Matter of the Charges Filed Against Jon Burge*, No. 91-1856 (Chicago Police Board, February 11, 1993).

[24] Boyle & Eagan, *supra* note 4, at 16; *see also* Jodi Rudoren, *Report on Chicago Police Torture is Released*, NEW YORK TIMES, July 19, 2006, *available at* http://www.nytimes.com/2006/07/19/us/19cnd-chicago.html?ex=1310961600&en=7d6c899743e68af5&ei=5088&partner=rssnyt&emc=rss. Robert Boyle, the chief deputy special state's attorney, who led the investigation, condemned Brzeczek, saying, "he did not just do his job poorly, he just didn't do his job." *Id.*

[25] Boyle & Egan, *supra* note 4, at 70.

[22] Taylor, *supra note 1*, at 181. (n. 17 citing Letter from Richard Brzeczek, Police Superintendent, to Richard Daley, State's Attorney, Cook County (Feb. 25, 1982) (on file with G. Flint Taylor); Statement of Richard Brzeczek to special prosecutor, March 9, 2005).

[27] *Wilson v. City of Chicago*, 6 F.3d 1233, 1240 (7th Cir. 1993).

[24] *Id.*

[25] Taylor, *supra note 1*, at 182, stating "Wilson's civil rights case went to trial in February 1989, amid little fanfare. While torture at Area 2 had long been an 'open secret' at Area 2, the police department and the state's attorney's office

that the 2006 report by the United Nations Committee against Torture, calling for an independent investigation of the Chicago police torture,[26] would encourage the U.S. Attorney of the Northern District of Illinois, or the Department of Justice, to initiate an independent investigation into Area 2 and any ongoing cover-up.[27] However, no such investigation has ensued.

This Article will include a detailed analysis of the Andrew Wilson criminal case, which brought ongoing Chicago police torture to light, and then an examination of the 'ends justified the means' attitude held by the CPD and the CCSAO that enabled and protected police torturers like Jon Burge and others in Area 2. This article will then consider the collusion between the CPD and the CCSAO that resulted in a deeper miscarriage of justice, those responsible individuals and public officials who did not take action to end the torture but instead enabled it. The article will then turn to the special prosecutors appointed to investigate Jon Burge and Area 2 and how they produced a biased and flawed report that failed to hold anyone accountable, along with the role racism played in the Cook County court system in the 1970s and 1980s. This article will then explore the impact judges had on handling cases of police torture and false confessions. Lastly, this article will address the roots and history of torture on American soil, in particular, where Jon Burge's tactics came from, the mentality and rationale behind them and what can be done to prevent such horrible abuses by police officers and ensuing cover-ups by public officials in the future, with an eye on the pending first-degree murder charges against a CPD officer in the Laquan McDonald shooting case.

## 1. The Torture of Andrew Wilson

---

managed to keep the lid on that secret, and every Cook County judge who heard allegations of torture on motions to suppress rejected them."

[29] *See* United Nations Committee Against Torture, Conclusions and Recommendations of the Committee Against Torture, May 18, 2006, *available at* http://www.state.gov/documents/organization/133838.pdf.

[30] A 2007 report in response to the Special Prosecutors' Report requested such action. *See Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago* 49 (April 24, 2007), *available at* http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-of-Report.pdf. This report was endorsed by 212 individuals and organizations active in the fields of human rights, criminal justice, civil rights, and racial justice including Reverend Jesse L. Jackson Sr., Cherif Bassiouni, Studs Terkel, Andrea Lyon, and Howard Zinn.

The case of Andrew Wilson presents the clearest evidence of torture.[28] Before analyzing the details of Wilson's trial, Burge's testimony, and the failed prosecutorial efforts, it is crucial to first understand the inflammatory nature of Wilson's crime and the specific physical abuse he suffered.

Mr. Wilson was convicted of murdering two Chicago police officers and sentenced to death.[29] The Illinois Supreme Court reversed Wilson's conviction on grounds that his confession should have been suppressed because the state failed to explain how he suffered certain injuries while in police custody.[30] After Wilson was retried and convicted, he was sentenced to life imprisonment.[31]

Following his trial, Mr. Wilson filed a civil rights action naming Superintendent Richard Brzeczek, Police Chief Jon Burge, the city of Chicago and other police officers as defendants.[32] The first trial resulted in a hung jury, and the jury in the second trial delivered a "special verdict," which found that, even though Mr. Wilson's constitutional rights had been violated, all police officers involved were exonerated.[33] The jury also found that the city of Chicago had a "*de facto* policy" that authorized police officers to physically abuse persons suspected of having injured or killed a police officer.[34] The jury concluded that the policy had not been a "direct and proximate cause" of the physical abuse Mr. Wilson suffered.[35] From the jury's perspective, the law basically sanctioned police abuse against a cop killer.

The jury was unaware of the tortured confession of Mr. Wilson because Assistant State's Attorney Lawrence Hyman, who took Wilson's confession, never asked Wilson at trial if his confession was coerced.[36] Mr. Hyman's failure to ask Mr. Wilson if his confession was voluntary represents a "spectacular omission" for an ASA in a murder case, especially one involving the death of a police officer.[37] Mr. Hyman's failure was also shocking because of the nature of the abuse Mr. Wilson sustained while in police custody. Photographs taken at Cook County Jail following Mr.

---

[31] Boyle & Egan, *supra* note 4, at 43.
[29] *People v. Wilson*, 116 Ill. 2d 29 (1987).
[30] *See supra note 27.*
[31] *Id.*
[32] *Wilson v. City of Chicago*, 707 F. Supp. 379 (N.D. Ill. 1989).
[33] *Id.*
[34] *Id.*
[35] *Id.*

[37] *Id.*[38] *Id.*

Wilson's interrogation show "burns, cuts, and a pattern of scabs" allegedly left by "alligator clips."[38] Those clip marks turned out to be the strongest evidence supporting Wilson's torture allegations. The allegations also included the administration of electric shock.

Ultimately, the city of Chicago and Andrew Wilson settled the case for payment of $100,000 damages to Mr. Wilson and covered his $900,000 in attorneys' fees.[39] After realizing that Wilson's civil suit held water, the CCSAO decided to settle likely to prevent further investigation into Area 2 and other torture victims. The torture cover-up in Wilson's case, which involved systemic suppression and the denial and discrediting of other torture allegations, only begins to illuminate the callous and continuous physical police abuse permitted by the CPD and overlooked by the CCSAO.

The specific abuse inflicted on Mr. Wilson during and following his arrest reveals the level of violence and severity of torture committed. During the arrest, Wilson was thrown to the floor and Jon Burge placed one knee on the small of Wilson's back and the other knee on the back of Wilson's head.[40] Mr. Wilson also testified that other officers kicked, slapped, and hit him with their fists.[41] Upon arriving at Area 2, Mr. Wilson's head was covered with a plastic bag and his arm was burned with a cigarette.[42] He was then handcuffed to a ring on the wall next to a radiator. Later, Jon Burge entered that room and demanded that Mr. Wilson confess; Wilson refused.[43] Another officer then entered the room holding a black box that contained two wires with alligator clips.[44] One clamp was attached to Wilson's left ear and another to his left nostril.[45] Wilson received a shock when the officer cranked the box.

Wilson was then stretched across the radiator and the clamps were placed on his fingers.[46] Jon Burge then took out a device resembling a "curling iron," and rubbed it between Wilson's legs.[47] Mr. Wilson was then taken to another room in

---

[38] *Id.*
[39] Boyle & Egan, *supra* note 4, at 44.
[40] *Id.* at 46.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.* at 47.
[47] *Id.* Wilson testified that Burge ran an electric-shock device "up between my legs, my groin area... then he jabbed me with the thing and it slammed me...

which Jon Burge entered and put a gun in Wilson's mouth and pulled the trigger. Jon Burge told Wilson that the abuse would end if he confessed to the murders of Richard Fahey and Richard O'Brien.[48] It was only at that point that Mr. Wilson agreed to make a statement.[49] .

Shortly after Wilson was brought to the Cook County Jail, Dr. John Raba, director of medical services for the Cook County prison hospital, examined him, heard a description of his torture and wrote a letter to Police Superintendent Brzeczek describing the injuries suffered by Andrew Wilson and demanding a full investigation.[50] The letter (the "Raba letter") provided more than a sufficient basis to initiate an investigation. However, following receipt of the letter, neither the CCSAO nor the OPS initiated an investigation of either Area 2 or Jon Burge.

The crucial disconnect occurred when Mr. Brzeczek delivered the Raba letter directly to State's Attorney Daley. Mr. Daley, Mr. Devine, and Mr. Kunkle all received and read the letter and, as their 2006 interviews revealed, were all aware that the letter established criminal conduct in Area 2.[51] This conduct demonstrates the code of silence existed amongst police officers and prosecutors alike. Following receipt of the letter, these three men appear to have engaged in a conspiracy of silence. The key disjunction between Brzeczek, the Raba letter, and the CCSAO's receipt of the letter begins to reveal who had specific information of the ongoing torture, who failed to act during and after Andrew Wilson's trials, and why those people failed to act.

### 2. "The End Justifies the Means"[52]: Attitudes That Enabled and Protected Police Torturers

---

into the grille on the window. Then I fell back down, and I think that's when I started spitting up the blood and stuff." *See* John Conroy, *House of Screams: Torture by Electric Shock: Could it Happen in a Chicago Police Department? Did it Happen in Area 2?*, CHICAGO READER, January 26, 1990, *available at* http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107.

[48] *Id.*

[49] *Id.*

[50] *Id.* at 48-49. *See also* Taylor, *supra note 1*, at 181. (n. 14 citing Letter from Dr. John Raba, Medical Services Director, Cook County Prison System, to Richard Brzeczek, Police Superindent (Feb. 17, 1982) (on file with G. Flint Taylor).

[51] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 11.

[52] KEVIN DAVIS, DEFENDING THE DAMNED: INSIDE CHICAGO'S COOK COUNTY PUBLIC DEFENDERS OFFICE 101 (2007) (quoting Andrea Lyons). Andrea Lyons explained: "It's the end-justifies-the-means problem... I mean, a guy comes to court with twenty-seven stiches. We all knew what was going on. We really

The "torture of more than 60 black men in Area 2 over a period of more than 13 years could not have occurred without the assistance of numerous individuals and institutions, including judicial officers and judicial institutions."[53] The scope of the abuse gives rise to a series of unanswered questions: 1) Was this a case of oversight between the police and the CCSAO, or was there something more sinister and insidious behind the neglected investigations?; 2) Was there collusion between police officers and prosecutors for the sake of obtaining confessions, which were, at the time, so crucial to convictions?; 3) Did prosecutors merely look the other way when they learned that confessions were obtained by police abuse? It is as if an unspoken agreement, an unwritten protocol, existed between police officers and prosecutors that "the end justifies the means."

An examination of Area 2 procedures, specifically focusing on the *Wilson* case, reveals prevailing attitudes and mentalities of the attorneys, police officers, and government officials who each played a part in shielding perpetrators of torture from prosecution.

### A. The Deeper Miscarriage of Justice: Collusion Between State's Attorneys and Police Officers

The CCSAO and the CPD were mutually dependent in the sense that cops needed prosecutors to affirm their arrests with convictions and prosecutors needed confessions to get those convictions. This interplay often resulted in a blinding desire by both groups to obtain confessions. Although legal requirements for confessions have since been greatly reformed, confession evidence during the 1970s and 1980s was critical to achieving convictions.[54] Thus, prosecutors were often all too willing to turn a blind eye when confronted with allegations of a tortured confession.

While police detectives illegally obtained confessions from many guilty defendants, a surprising number of innocent men were also sentenced to jail and death row due to coerced confessions. In January of 2003, Illinois Governor George H. Ryan granted pardons to four black men on death row who had been tortured by

---

tried hard to show it to the juries. But it was your clients' word against the cops." *Id.*

[53] Bandes, *supra* note 1, at 1278.

[54] *See* Timothy O'Neill, "Ruling is Strong Shield on 'Involuntary' Confession." CHICAGO DAILY LAW BULLETIN 148 (2002): 6; *see also* Welsh S. White, "*What Is an Involuntary Confession Now?*" 50 RUTGERS LAW REVIEW 2001, 2001–57 (1998).

Jon Burge--Madison Hobley, Leroy Orange, Stanley Howard, and Aaron Patterson—based on actual innocence. Each case reveals a terrible, indelible miscarriage of justice. As Governor Ryan explained:

> The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. We have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is so terribly broken about our system.[55]

This Article cannot deal with every case of torture and wrongful conviction.[56] Instead, it focuses on the deeper miscarriage of justice underlying all these cases and the shocking absence of criminal liability and political accountability.

Why did prosecutors never charge Burge and his fellow officers for their crimes? Why were Jon Burge and his fellow officers never charged by prosecutors? Exactly who was aware of the police torture in Area 2 and did nothing to stop it? The answers to these questions reveal deeply-rooted flaws in Chicago's justice system, which, ultimately, reflects a widespread lack of accountability in America's core legal and political institutions.

### B. Daley, Devine, Dereliction of Duty, and Denial

The *Wilson* case created a conflict of interest for Former Mayor Daley's office. How could the CCSAO fairly and simultaneously prosecute Wilson and the police officers involved in his arrest? Certainly, Mr. Daley could have just referred the matter to the attorney general or the U.S. attorney.[57] Instead, he conferred with his top aides, Richard Devine and William Kunkle, and chose to do nothing.[58] These men were aware of Mr. Wilson's

---

[55] Statement of Governor George Ryan, DePaul University School of Law, January 10, 2003.

[61] *See also* List of Victims, Pozen Family Center for Human Rights, *available at* https://humanrights.uchicago.edu/page/list-victims (for a documented list of 101 known torture victims of Burge and his detectives from 1972-1991, compiled in March of 2005 by the Peoples' Law Office. Since then, more than 30 other victims have come forward with their stories).

[62] Rob Warden, *Ignoring an injustice*, CHICAGO TRIBUNE, April 29, 2007, *available at* http://articles.chicagotribune.com/2007-04-29/news/0704271277_1_richard-brzeczek-torture-special-prosecutors.

[58] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 12.

abuse and knew that they had both the authority and the duty to initiate an investigation of Area 2. Instead, they engaged in a "conspiracy of silence."[59] Richard Daley's office went on to convict Mr. Wilson based on his tainted confession and he was sentenced to death.[60]

Whether the inaction of Richard Daley, Richard Devine, and William Kunkle was criminal is unclear, but the Special Prosecutor's Report released in 2006 found only that Police Superintendent Brzecezek was guilty of "dereliction of duty."[61] In fact, the report placed almost all the responsibility on Mr. Brzecezek, even though he had informed Mr. Daley about Mr. Wilson's torture from the beginning. Mr. Daley persisted in denying knowledge of torture even as a "mountain of evidence" piled up indicating torture was an "ordinary occurrence" at Area 2.[62] Even after he was elected Mayor, Mr. Daley never requested investigation into Area 2.

Three years into Mayor Daley's term, he received a report by the OPS stating that Jon Burge and his subordinates had engaged in "systematic" torture and abuse for over a decade.[63] Instead of ordering the CPD to look into the matter, Mayor Daley publicly condemned the OPS's methodologies and conclusions.[64]

### C. Encouraging Torture: Mayor Daley's Commendation of Jon Burge

After hearing of Mr. Wilson's torture allegations and receiving hard evidence to support such claims, Mayor Daley never authorized a single criminal investigation and, thus, the CPD

---

[59] *Id.* at 41.

[60] Four years later, Wilson's conviction was reversed by the Illinois Supreme Court. However, he was again convicted—without his tortured confession—and sentenced to life imprisonment. *See* Boyle & Egan, *supra* note 4, at 52.

[61] *Id.* at 17.

[62] *Hinton v. Uchtman*, 395 F. 3d 810, 822 (7th Cir. 2005) (Wood, J., concurring).

[63] *See* OPS Special Project Conclusion Reports and Findings, November 2, 1990 (Goldston Report). The OPS investigators found that acts of torturous treatment Wilson suffered were almost identical to other detailed accounts, revealing an astounding pattern or plan by Burge and his detectives to torture certain suspects into confessing to crimes. *See* Memorandum In Opposition to Motion to Bar Testimony Concerning other Alleged Victims of Police Misconduct, filed before the Police Board in the *Matter of Charges Filed against Respondents Jon Burge, John Yucaitis and Patrick O'Hara*, Case Nos. 1856-58, January 22, 1992, p. 1, *cited in Report on the Failure of Special Prosecutors, supra* note 30, at 17.

[64] *See Chicago Tribune*, February 8, 1992, cited in *Report on the Failure of Special Prosecutors, supra* note 30, at 11.

never investigated Area 2.[65] Instead, less than a year after Mr. Daley received the Raba letter documenting Wilson's torture in Area 2, he honored Jon Burge and four other Area 2 detectives involved in the *Wilson* case.[66]

Mayor Daley's decision to honor Jon Burge and his crew amounted to tacit encouragement of their practices. Ignoring acts of torture when one has a duty to intervene may constitute a dereliction of duty, but *praising* those responsible seems much worse. For Mayor Daley, a man with arguably more power, influence, and authority than any other Chicagoan, to commend Jon Burge reverberates with the historic corruption of police and government officials that originally gave Chicago its illicit reputation. Mayor Daley made no mistake; there was no confusion. He knew the identity of the men he was honoring, and exactly what his praise would mean going forward. Mayor Daley's action, and inaction, speak louder than words, and are tantamount to state-sanctioned torture.

In 1986, Andrew Wilson brought a civil rights action in federal court, alleging he was tortured by Burge and several other Area 2 detectives. Daley's second-in-command at the CCSAO, Richard Devine, who had since entered private practice, was selected to represent Jon Burge.[67] At about the same time, Burge was promoted to commander.[68] As corporate counsel, Mr. Devine and his law firm earned more than $1 million defending Jon Burge and other Area 2 detectives over a period of eight years.[69] Once Mr. Devine became Cook County's State's Attorney, Mr. Devine, "blocked all substantive investigations of Area 2 torture," defended against claims of torture, and continually relied on illegal confessions to uphold convictions.[70] The CCSAO's steadfast refusal to investigate police abuse allegations continued until Paul Biebel, the Presiding Judge of the Criminal Division of the Cook County Circuit Court found that Mr. Devine's office had a "conflict of interest," and disqualified them from prosecuting cases involving police abuse allegations.[71] Although Special Prosecutors

---

[65] Brzeczek Dep., *Wilson v. City of Chicago*, pp. 123-24; Brzeczek Affidavit.
[66] *Daley Hails 11 in Crime War*, CHICAGO TRIBUNE (May 20, 1983).
[67] Sept. 25, 2006, and Dec. 11, 2006, depositions of Leroy Martin, and Sept. 27, 2006, and Nov. 14, 2006, depositions of Richard Devine in *Orange v. Burge*, No. 03 C 4433 (N.D. Ill.) and *Cannon v. Burge*, No. 05 C 2192 (N.D. Ill.).
[68] Taylor, *supra* note 1, at 182.
[69] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 13.
[70] *Id.*
[71] *In Re Special Prosecutor*, 2001 Misc. 4, Order and Opinion of Judge Biebel, April 24, 2002.

were eventually appointed to investigate Area 2 in 2002, their efforts were hardly impartial.[72]

### D. Biases and Flaws of the Special Prosecutors' Report

Following the release of the Special Prosecutor's Report, many perceived the report as "unfair, misleading, and disingenuous."[73] Consequently, a devoted team of volunteer attorneys, researchers, and community activists formed to respond. After nine months, this team submitted a report ("the Report"), which was endorsed by 212 individuals and organizations active in the fields of human rights, criminal justice, civil rights, and racial justice.[74]

The Report claimed that the Special Prosecutors failed to address the "systemic and racist nature" of the "dehumanizing physical and psychological abuse" and never even identified the acts as torture, as defined by the International Convention against Torture.[75] The Report also alleged that the Special Prosecutors' investigation was "flawed by design," and reflected questionable prosecutorial tactics and strategies, stating the following:

---

[72] The two attorneys appointed were "former high-ranking assistant state's attorneys with strong connections to the late Richard J. Daley (Richard M. Daley's father) and his Democratic political machine." Taylor, *supra* note 1, at 188. It was later revealed that special prosecutor Edward J. Egan had 9 relatives in the CPD, one of whom served under Burge at Area 2 in the 1980s and participated in the arrest of torture victim Gregory Banks. *Torture report and family ties: Top investigator had nephew on Burge's staff*, CHI. SUN-TIMES, Aug. 6, 2006.

[73] *Id.* at 2.

[74] The *Report on the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago* was endorsed by individuals including Reverend Jesse L. Jackson Sr., Cherif Bassiouni, Studs Terkel, Andrea Lyon, and Howard Zinn, *available at* http://peopleslawoffice.com/wp-content/uploads/2012/02/5.8.07.Final-Corrected-Version-of-Report.pdf.

[75] *See* Office of the High Commissioner of Human Rights, "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx. The 1984 Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession… when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." *Id.*

> [T]he investigation was neither designed nor intended to develop evidence in support of indictments for crimes not barred by the statute of limitations but rather was designed to avoid embarrassing City, County, CPD, and SAO officials responsible for the torture scandal and cover-up, and protecting the City from civil liability.

The Report asserted that the Special Prosecutors could have made indictments within the statute of limitations had they proceeded in a timely fashion.[76] The Report further alleged that the Special Prosecutors failed to hold Mayor Daley, Mr. Devine, and other officials accountable for their roles in the torture scandal. The Special Prosecutors, instead, put all the responsibility on Mr. Brzeczek "in a bizarre perversion of logic," shifting blame for "Daley's dereliction of duty to... Brzeczek."[77] The Special Prosecutors apparently attempted to discredit Mr. Brzeczek and his story, aggressively interrogating him, questioning him under oath, and before a Special Grand Jury.[78] However, Mayor Daley and Mr. Devine were not even questioned until the investigation was wrapping up in early 2006, at which point they were informally interviewed.[79] The most revealing statement made in this process was Mayor Daley and Mr. Devine's acknowledgement that they had seen the Raba letter.[80]

Before the report was even released, Mr. Brzeczek predicted that he would be made into a "scapegoat" by the Special Prosecutors to absolve Mayor Daley and Mr. Devine.[81] In an apparent attempt to cover their tracks, the Special Prosecutors asked William Kunkle for a sworn statement about communications that he had with Mayor Daley and Mr. Devine. Special Prosecutors took sworn statements from Mayor Daley and Mr. Devine in which both conceded that they received the Raba

---

[76] For example, the Report states that Burge could have been indicted for "perjury" and "obstruction of justice" for his 2003 sworn statement at the *Hobley v. Burge* federal court case in which he denied under oath that he had witnessed or participated in any torture or abuse of suspects during his tenure in the CPD. Such crimes would have fallen within the three-year statute of limitations. *See Report on the Failure of Special Prosecutors*, *supra* note 30, at 6.

[77] Warden, *supra* note 62.

[78] Statement of Richard Brzeczek, March 9, 2005; Grand Jury Testimony of Richard Brzeczek, October 5, 2005.

[79] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 11.

[80] *Id.*

[81] *Id.*

letter and had knowledge of the criminal conduct the letter established.[82]

The strangest and most suspicious aspect of this investigation was that the Special Prosecutors "asked no additional questions" of Mayor Daley and Mr. Devine regarding either their knowledge of the torture at Area 2 or their subsequent inaction.[83] In fact, U.S. Magistrate Judge Geraldine Brown found that Mayor Daley's statement consisted almost entirely of "leading questions" often prefaced by "long factual recitations."[84]

More than 50 additional cases of torture arose in Area 2 while Mr. Daley was State's Attorney. When those torture allegations were raised in court, other ASAs under Mr. Daley "defended the veracity of such confessions," claiming no torture occurred.[85] Not only does the torture appear to have been "systemic,"[86] but the unwritten protocol for ASAs dealing with torture allegations appears to have been to deny and discredit.

In terms of prosecutorial ethics, a prosecutor shall make known anything that "negate[s] the guilt of the accused" or "mitigates the offense."[87] Knowledge of tortured confessions constitutes information that a prosecutor has the duty to make known under the Model Rules of Professional Conduct.

One of the clearest documented violations of this principle at Area 2 involved Lawrence Hyman, the ASA who took Mr. Wilson's confession. According to Mr. Wilson's testimony, immediately after the interrogation, Mr. Wilson asked Mr. Hyman the following: "You want me to make a statement after they've been torturing me?"[88] At that point, Mr. Hyman should have seen

---

[82] Statement of Richard M. Daley, June 12, 2006; Statement of Richard Devine, June 15, 2006, cited in *Report on the Failure of Special Prosecutors*, *supra* note 30, at 12.

[83] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 12.

[84] *Hobley v. Burge*, 2007 U.S. Dist. LEXIS 12159, at *8 n.2 (N.D. Ill. Feb. 23, 2007).

[85] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 13.

[86] *See* Michael Goldston, *Goldston Report*, based on an internal investigation by the Police Office of Professional Standards (OPS).

[87] MODEL RULES OF PROF'L CONDUCT R. 3.8(d) (2015).

[88] Memorandum in Opposition to Motion to Bar Testimony Concerning Other Alleged Victims of Police Misconduct at 6, In the Matter of Charges Filed Against Police Commander Jon Burge et al., (1992) (Case No. 1856), *available at* https://humanrights.uchicago.edu/sites/humanrights.uchicago.edu/files/uploads/Memoran duminOpposition.pdf (citing Testimony of Andrew Wilson, July 7, 10, 11, 1989, at 2956- 59).

vivid evidence of Mr. Wilson's physically battered condition. Still Mr. Hyman did nothing. Instead, Mr. Hyman continued prosecuting the case against Mr. Wilson, obtaining a conviction and the death sentence despite the use of the tortured confession. This prosecutorial misconduct is egregious and, unfortunately, hardly represents an isolated incident. The systemic torture occurring for two decades was enabled by equally systemic prosecutorial misconduct.

What were these prosecutors thinking? Had they become desensitized? Did they believe the torture was justified? Did they believe it was not their duty or their place to intervene? Why was there such a diffusion of responsibility? In answering these questions, it is crucial to understand the underlying, deep-seated community attitudes.

### E. How the Code of Silence Protecting Jon Burge was Finally Broken

To place all of the responsibility and blame on former Mayor Daley, Mr. Devine, and Mr. Kunkle, the high-ranking political officials, and the ASAs, like Mr. Hyman, is to ignore all the other players in the law enforcement and legal community that enabled Jon Burge and Area 2 to go unchecked for over twenty years. Socio-cultural factors that contributed to the inaction and the ongoing conspiracy of silence reveal broader culpability in the socio-political community that lurked beneath the surface.

Police officers widely feared breaking the code of silence, which protected Jon Burge and other officers in Area 2. However, two brave cops eventually spoke out. One did so anonymously and another, Detective Frank Laverty, did so publicly and was ostracized. One retired officer from Area 2 explained that more officers and detectives would speak out if they did not fear losing their jobs or other repercussions.[89] The same officer discussed her reticence to testify against Jon Burge:

> Examiner: What [is] your belief about what would have happened if you had come forward and rocked the boat with regard to what you know and what you had heard about police torture and about Burge and the Area 2 team?
> Byrd: Well, first of all, we would have been frozen out of

[90] Sworn statement of Doris M. Byrd. *In re: Patterson v. Burge*. Taken 11/9/2004. CD 1, AA Det. Folder, available at http://humanrights.uchicago.edu/page/faqs.

> the police system. We would have been ostracized. We definitely wouldn't have made rank. We probably would have been stuck in some do-nothing assignment.[90]

In 1982, Detective Laverty, who worked under Jon Burge in Area 2, came forward and exposed the existence of "secret street files"; documents that were not turned over to defense lawyers because they contained inconvenient truths that could hamper prosecutions of suspects who the police had already decided were guilty of crimes.[91] These police records had been illegally maintained for years before Officer Laverty exposed them.

As a whistleblower, Officer Laverty did not escape unscathed. In fact, his decision to break the code of silence established a terrifying protocol for what would happen to officers who spoke out. One retired sergeant at Area 2 recalled a meeting with Jon Burge when Officer Laverty walked in to retrieve a file: "When he left, Burge took out his gun, pointed it at the back of Laverty, and said, 'Bang'."[92] Soon after, Officer Laverty was transferred from the day shift to afternoons and evenings, and assigned to clerical work. Jon Burge told him that he would soon be fired.[93] In the following weeks, the brakes on Officer Laverty's car, which had been serviced at Area 2, failed.[94]

The consequences for breaking the code of silence were clear. To date, only one other officer has come forward, doing so in an anonymous letter sent to the People's Law Office[95] in March 1989. In reference to impending civil suits brought by Andrew Wilson, the letter read:

> As I have said previously I do not want to be involved in this affair. That is why I asked for the reassurance that these letters would be kept private. I do not wish to be shunned like Officer Laverty has been. . . . Almost all of

---

[90] *Id.*

[91] Conroy, *supra* note 20.

93 Statement of Doris Byrd, November 9, 2004, pp. 8-12, 16, cited in *Report on the Failure of Special Prosecutors, supra* note 30, at 22.

[93] Conroy, *supra* note 17.

[94] *Id.* Laverty believed his brakes had been tampered with by a mechanic whose brother was an Area 2 detective.

[95] For 40 years, People's Law Office has represented victims of the police and other government officials. The Office has fought for justice for people who have been tortured or physically abused, wrongfully arrested or convicted, or unfairly sentenced to death. For more information, *see* http://peopleslawoffice.com/issues-and-cases/chicago-police-torture/.

> the detectives and police officers involved know that Wilson [sic] did the murders but they do not approve of the beatings and torture. . . . I advise you to immediately interview a Melvin Jones who is in the Cook County Jail on a murder charge. . . . When you speak with him. . . you will see why it is important.[96]

This letter, among several others mailed in police department envelopes by a still-unidentified person, broke open the Jon Burge scandal.[97] Ultimately, the information that the anonymous informant provided in such letters led attorneys at the People's Law Office, along with other investigators, to discover similar cases of physical abuse.

One significant case involved Melvin Jones, who testified that, when he was interrogated, Jon Burge had a little wooden box with a long cord.[98] Mr. Jones said Jon Burge pulled down Jones' pants to his ankles and electrically shocked his foot, then his thigh and finally his penis.[99] Mr. Jones testified that he kept screaming, telling Jon Burge that he was not supposed to do those things to a person in custody.[100] According to Mr. Jones' testimony, Jon Burge responded by telling Mr. Jones that he had no proof, and then asking Detective Flood, who was present for the shocking, if he had seen anything. Detective Flood then looked at the ceiling and responded that he had not. Mr. Jones stated that Jon Burge said, "[n]o court and no State are going to take your word against a Lieutenant's word."[101] Mr. Jones further stated that Jon Burge pulled out a gun and cocked it, put it up to his head and said he was going to "blow Jones' black head off."[102]

This scene reveals the degree to which Jon Burge felt that he was above the law. Mr. Jones' testimony, which corroborated Mr. Wilson's torture allegations, was taken only nine days after

---

[96] Anonymous letter to People's Law Office attorney G. Flint Taylor, March 1989, *cited in* John Conroy, *The Good Cop*, CHICAGO READER, Jan. 5, 2007, *available at* http://www.chicagoreader.com/features/stories/goodcop/. Taylor referred to the anonymous author as "Deep Badge." *See* "To Catch a Torturer: One Attorney's 28 Year Pursuit of Racist Chicago Police Commander Jon Burge," *In These Times*, Mar. 30, 2015, *available at* http://inthesetimes.com/article/17794/to-catch-a-torturer-one-attorneys-28-year-pursuit-of-racist-chicago-police.

[97] John Conroy, *supra* note 17.

[98] Transcript of Testimony of Melvin Jones at 68 (Aug. 5, 1982) (No. 82-1605).

[99] *Id.* at 69-70.

[100] *Id.* at 71.

[101] Transcript of Testimony of Melvin Jones, *supra* note 107.

[102] *Id.* at 76-79.

Wilson's confession. The fact that these specific allegations were not investigated at the time they were made illustrates an egregious lack of oversight by police and government officials working on these cases.

### F. "Everybody's White"[103]: Cook County State's Attorneys of the 1970s and 1980s

It can be counted on one hand the number of black assistant state's attorneys in the 1970s and early 1980s.[104] The disproportion of white to minority prosecutors hints at the racialized mentality of white prosecutors towards black suspects. Steve Bogira's book, *Courtroom 302,* provides a detailed look behind the scenes of Cook County's Leighton Criminal Courthouse, providing insight into the prosecutorial mentality at the time. For example, in Mr. Bogira's book, Judge Daniel Locallo describes a past contest in the local prosecutor's office, called the "Two-Ton Contest," in which rookie prosecutors strove to be the first to convict 2,000 tons of black defendants.[105] The title used by some prosecutors was "Niggers by the Pound."[106]

This anecdote illustrates not only patent racism, but also unconscious racism based on prosecutors' skewed, discriminatory frames of reference. Discriminatory inferences abound when one is surrounded by almost all white lawyers and almost all black defendants every day.

As more and more torture allegations surfaced, each accusing the same Area 2 detectives, the legal community remained curiously silent. The shameful, though likely truthful, explanation is that all of the suspects tortured were black. The racial divide between attorneys and defendants created a disconnect between the morality of those individuals aware of the torture and their actions, a sense of detachment, and desensitization toward these black men as victims. Understanding the prosecutors' racially skewed perspective explains but does not excuse the lack of empathy for victimized black criminals.

---

[103] Statement by Frank Avila, Aaron Patterson's attorney, who explained, "I don't want to turn this into a racial issue, but there were no African-American attorneys involved in the investigation." *See* Oliver Burkeman, *Chicago Police 'Tortured Black Suspects'*, THE GUARDIAN, July 21 2006, *available at* http://www.theguardian.com/world/2006/jul/21/usa.oliverburkeman.

[104] STEVE BOGIRA, COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE 69 (Knopf 2005).

[105] *Id.*

[106] *Id.*

To what degree assistant state's attorneys had knowledge of torture occurring in Area 2 is unclear. However, the extent of their awareness of the torture seems moot; either torture occurred or it did not. Numerous collaborating accounts demonstrated "common knowledge" of the illegal interrogations that persisted at Area 2.[107] An anonymous letter sent to Andrew Wilson's attorneys in 1992 explained:

> I believe that I have learned something that will blow the lid off your case. You should check for other cases where Lt. Burge was accussed (sic) of using this devices (sic). I believe he started many years ago right after he became a detective. . . . I have checked into who was assigned to Area 2 while this was going on and have some comments on the people assigned. You must remember that they all knew as did all of the State's Attorneys and many judges and attorneys in private practice.[108]

As early as the late 1970s, Area 2 torture was "common knowledge" in Cook County's criminal courts.[109] Janet Boyle, a former assistant public defender, who represented Area 2 victims in the late 1970s, said she "heard a lot of rumors and innuendos" in those days about "abuses by Area 2 detectives... particularly 'Red Burge'd."[110] An assistant public defender, who later became a Chicago alderman, said that physical abuse at Area 2 was "common knowledge," describing it as a "torture chamber."[111]

Criminal defense attorney, dean and law professor Andrea Lyon, who represented defendants tortured by Jon Burge, explained: "When I would go into lockup to pick up a new case, if someone was bleeding, if their testicles were so swollen that they needed an operation afterwards, I knew who arrested 'em and so did everybody else. This is not a secret, it hasn't been a secret for a long time."[112]

Sergeant Doris Byrd, who worked at Area 2, testified that between 1981 and 1984 it was an "open secret" that the detectives

---

[107] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 29.

[108] First and Second Letters from anonymous police source, postmarked February 2, and March 6, 1989, cited in *Report on the Failure of Special Prosecutors*, *supra* note 30, at 20.

[109] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 29.

[110] Summary of Special Prosecutors' Interview with Janet Boyle, April 6, 2005.

[111] Summary of Special Prosecutors' Interview with Tom Allen, July 14, 2005.

[112] Quoted on *Chicago Public Radio*, *available at* http://www.wbez.org/Cityroom_Read.aspx?storyID=10320.

used telephone books, bags, and an electric shock box to obtain confessions.[113] Area 2 had a "reputation" for its "methods" within the Public Defenders' Office.[114] One public defender said that when he told a supervisor about his clients' allegations of being suffocated by a plastic bag, the supervisor replied, "Oh, that would be Area 2."[115]

If so many people were aware of what went on in Area 2, why was there no reaction or response? Why did state's attorneys and public defenders, witnessing case after case involving torture claims, do nothing for so long? A collective diffusion of responsibility helps explain the overall inaction of attorneys and police officers. Because no one helped the torture victims initially, the "destruction process" evolved and the harm done to black criminals became normalized.[116]

### G. The Role and Impact of Judges

Torture allegations arose from Area 2 over three decades in hundreds of suppression hearings, trials, and post-conviction proceedings. To date, however, no Cook County judge has found that a single act of torture occurred.[117]

Why have judges never fully addressed the torture allegations? It might be partly because they are more preoccupied with convicting defendants whom they believe are guilty. Also, many judges then and today are yesterday's ASAs and would likely rather sweep this history under the rug than face the demons of their past. Eleven felony review ASAs who took statements from suspects claiming torture by Jon Burge have become judges, along with several ASAs who defended against torture allegations.[118] Three ASAs directly involved in the *Wilson* case are now Cook County judges: William Kunkle, Frank Deboni, and Gregory R. Ginex.

Judge Nicholas R. Ford, who recorded a confession from an alleged torture victim as an ASA, denied that same victim's

---

[113] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 22. *See also* Taylor, *supra* note 1, at 182 (citing Nov. 9, 2004, statement of former Area 2 Detective Doris Byrd).
[114] *Id.* at 29.
[115] Summary of Special Prosecutors' Interview with Lee Carson, May 12, 2004.
[116] *See* ERVIN STAUB, THE ROOTS OF EVIL: THE ORIGINS OF GENOCIDE AND OTHER GROUP VIOLENCE (1989) (exploring the psychological, cultural and societal roots of group aggression, particularly in the context of the Holocaust).
[117] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 43.
[118] *Id.*

post-conviction torture claim from the bench without a hearing.[119] This example illustrates the often insidious cycle between the CCSAO and the judiciary, particularly in looking the other way in the face of a clear conflict of interest.

Consider what might have happened if Mr. Egan and Mr. Boyle's Report did not dismiss criminal liability, but instead found that the CCSAO's refusal to prosecute torturers in Mr. Wilson's case constituted obstruction of justice. Such a finding would implicate former Mayor Daley, the head of the CCSAO, and at least three sitting judges.[120]

If former Mayor Daley, Mr. Devine, and others involved in this ongoing cover-up never face any consequences, their tainted legacies should at least be recorded for posterity.

Area 2 has been extensively documented and civil suits remain ongoing, which may indicate these human rights abuses have been identified and are being rectified. However, the question is whether the circumstances that allowed for Area 2-like environments are still permitted? It is worth examining similar scenarios that gave way to torture by Americans.

### 3. American Torture Parallels: The Dehumanization of Blacks and Muslims

The philosophy ingrained in some officers and prosecutors that physical abuse and torture are justified if such methods result in sending criminals to jail is an issue underlying the recent upsurge in debates about prisoner detainee torture and abuse in Guantánamo Bay, Abu Ghraib, and CIA secret prisons abroad.[121] Infamous photographs of torture are what brought attention to the conditions in Abu Ghraib. The images of abuse made "everyone in the world sit up and take notice immediately."[122]

Similarly, without photographs of Wilson's battered face, including alligator clip marks on his ears, torture in Area 2 may never have been exposed. However, had there been greater

---

[119] John Conroy, *Blind Justices*, CHICAGO READER, December 1, 2006, *available at* http://www.chicagoreader.com/chicago/blind-justices/Content?oid=923777.

[120] *Report on the Failure of Special Prosecutors*, *supra* note 30, at 44.

[121] KAREN GREENBERG, THE TORTURE DEBATE IN AMERICA (Cambridge Univ. Press 2005) (analyzing arguments on torture put forth by legislators, human rights activists, etc.); *see also* David Luban, *Torture, American-Style*, WASHINGTON POST, Nov. 27, 2005.

[122] S.G. MESTROVIC, THE TRIALS OF ABU GHRAIB: AN EXPERT WITNESS ACCOUNT OF SHAME AND HONOR 93 (2007) (describing the background and atmosphere of the trial from a psychological perspective).

documentation and more than just a few photos, as in Abu Ghraib, the torture might have received broader public attention, forcing earlier investigations of Area 2. In comparing the atmosphere of Area 2 to Abu Ghraib, the parallel cultures of permissive violence must be analyzed, as well as how such cultures were formed, and whether such cultures were reinforced by authority figures such as Richard Daley or Donald Rumsfeld, and finally why so many people were willing to look the other way.

### A. Burge's Military History in Vietnam

Jon Burge's military background is an important explanatory factor for his actions at Area 2. Before he was a Chicago Police Lieutenant, Jon Burge was a military police interrogator in the Vietnam War, where he served at a prisoner of war compound.

It was in Vietnam, most likely, that Mr. Burge witnessed, acquired, and honed the torture techniques he applied to suspects in Area 2.[123] Many officers who served with Mr. Burge in Vietnam knew that U.S. soldiers and military police used electric-shock torture on prisoners of war (POW's). Electric shock was delivered with a hand-cranked generator that also functioned as a military field telephone.[124] A childhood friend recounted how Jon Burge was an "electrical whiz," who once rigged up a communications system for a school play that included "a telephone control box which contained a little crank that generated voltage to ring a bell for a closed circuit phone system."[125] The black box technique Jon Burge had mastered as a young man was the same device that U.S. soldiers used in Vietnam, a field telephone that was jimmied into a torture method known as "the Bell telephone hour."[126] By importing these techniques, which had been proven effective in Vietnam's prisoner compounds, to Chicago's South Side, Jon Burge served as a military conduit for torture.

Walter Young, a retired officer, who served the CPD for nearly 36 years and was a detective under Jon Burge in the early 1980s, testified that he overheard references to Vietnam in Area

---

[123] Martin Smith, *Bad Apples from a Rotten Tree: Military Training and Atrocities*, COUNTERPUNCH, Aug. 5, 2006, *available at* http://www.counterpunch.org/2006/08/05/military-training-and-atrocities/.

[124] *Id.*

[125] *Id.* (citing *Southtown Economist, Jon Burge, Grade School Patrol Boy and Electrical Whiz*, (July, 20, 2006).

[126] *Id.*

2.[127] He said that many in the office believed that suspects could be made to talk if the same techniques that had been used in Vietnam on POWs were used. He also noted that the term "Vietnam special" or "Vietnam treatment" was used in Area 2.[128] Based on seeing the black box, and overhearing conversations, Young later deduced that the "Vietnam treatment" probably referred to the use of electric shock.[129]

Other methods of torture transported from Vietnam's prison compounds to Chicago's police interrogation rooms have recurred in different American contexts. Guantanamo Bay and Abu Ghraib are the most prominent examples. An analysis of parallels between Area 2, Cuba, and Iraq demonstrates the terrifying commonalities and political climates in which torture has been essentially sanctioned by the government.

### B. "Bad Apples from a Rotten Tree"[130]

The "bad apple thesis" suggests that Area 2 and Abu Ghraib illustrate actions of a few bad apples, but are not symptomatic of anything widespread. Such a theory discourages further investigation and broader analyses of torture's root causes and discounts the importance of preventative measures.

The press has treated Area 2 as the story of one "errant commander."[131] Jon Burge was painted as the "bad apple," the mastermind. Once Lieutenant Burge was gone, the story seemed to be over. However, portraying Area 2 as an isolated incident avoids addressing the systemic nature of torture that occurred.

It is a truism, at least among many scholars and experts, that torture is not the action of a few bad apples, but represents a "contaminated orchard," a systemic flaw, and a fundamental problem ingrained in police and military environments.[132]

### C. The Torture Mentality and Rationale

---

[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] Smith, *supra* note 134.
[131] *See* John Conroy, *Town Without Pity,* CHICAGO READER, January 12 1996, *available at* http://www.chicagoreader.com/policetorture/.
[132] *See* S.G. MESTROVIC, THE TRIALS OF ABU GHRAIB: AN EXPERT WITNESS ACCOUNT OF SHAME AND HONOR (2007) (explaining through psychological studies that military torture is not the result of a few bad apples but represents deeper flaws in the military); *see also* PHILIP ZIMBARDO, THE LUCIFER EFFECT (2007).

How do civilians, politicians, and the torturers themselves rationalize their actions? What values are in play? In the cases of Guantanamo or Abu Ghraib, the threat of terrorism, inflammatory patriotism, and dehumanization of foreign enemies all affect the mentalities of the participants.

In the case of Area 2, where Americans were tortured, other values like community safety factor into the equation. 'Protect your community' became the CPD's and CCSAO's rallying cry, as questions of morality, ethics, and human decency were jettisoned. Mr. Daley, Mr. Devine, and so many other assistant state's attorneys must have strongly believed that Jon Burge's strength as a police lieutenant, his 'no holds bars' interrogation methods, were more important than the physical abuse of suspects.

Torture victims are often seen as "agitators," as the community's "poor," as "heretics," and viewed as a threat to society at large.[133] The Area 2 victims were "easily devalued," as many were gang members with extensive police records.[134]

Richard Daley tacitly endorsed Jon Burge's activities and the CPD and CCSAO obediently followed lockstep. Stanley Milgram's experiment[135] helps explain the moral and social failure of lawyers, judges, and others who knew about torture in Area 2 but did nothing. Ordinary, well-intentioned citizens can allow terrible things to happen because of their "obedience to authority."[136] Who was the authority figure in Area 2? All signs point to one man wearing a suit instead of a lab coat, Richard M. Daley. Attorneys and police officers apparently fell in line behind

---

[133] *See* John Conroy, *Town Without Pity*, CHICAGO READER, January 12 1996, *available at* http://www.chicagoreader.com/policetorture/.

[134] *Id.*

[135] Stanley Milgram, *Behavioral Study of Obedience*, 67(4), JOURNAL OF ABNORMAL & SOCIAL PSYCHOLOGY, 371-378 (1963).

[139] Stanley Milgram, *The Perils of Obedience*, Harper Magazine (1974) http://home.swbell.net/revscat/perilsOfObedience.html (abridged and adapted from OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW (Harper 1974). Milgram explained: "I set up a simple experiment... to test how much pain an ordinary citizen would inflict on another person simply because he was ordered to by an experimental scientist... The extreme willingness of adults to go to almost any lengths on the command of an authority constitutes the chief finding of the study... Ordinary people, simply doing their jobs, and without any particular hostility on their part, can become agents in a terrible destructive process. Moreover, even when the destructive effects of their work become patently clear, and they are asked to carry out actions incompatible with fundamental standards of morality, relatively few people have the resources needed to resist authority." *Id.*

his lead. Mr. Daley commended Jon Burge and his crew less than a year after well-documented torture allegations were made. In doing so, Mayor Daley sent a clear message that what occurs behind closed police doors, though it might not be pretty, is permissible and even commendable if done in the name of 'protecting the community'. Sadly, it appears this message has persisted in the CPD and CCSAO to this day in light of the Laquan McDonald shooting (October 20, 2014) and handling of the case.

### D. The *Van Dyke* Case and Beyond: What Should Be Done?

It is critically important how the CCSAO proceeds with the criminal case against CPD Officer Jason Van Dyke who is on trial for first-degree murder[137] and other officers on the scene, who apparently filed false police reports to protect Van Dyke from prosecution but have not been charged.[138] It is hard to imagine a clearer demonstration that the code of silence persists within the CPD. The delay in charging Van Dyke for over 14 months and the timing that the charges were made (a day before a dashcam video was released contradicting the CPD's account) presented grave concerns regarding a conflict of interest between the CCSAO and the CPD.[139] Two petitions requesting the appointment of a special prosecutor in the case were filed based on this conflict of interest,[140] after which State's Attorney Alvarez recused herself and her office from the case.[141] Although this was encouraging, it was a long time coming and only occurred after Alvarez lost her

---

[137] *People v. Van Dyke*, No. 15 CR 2062201 (2015).

[138] Monica Davey, *Officers' Statements Differ From Video in Death of Laquan McDonald*, NY TIMES, Dec. 5, 2015, http://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html?_r=0.

[139] Dan Hinkel, Matthew Wahlberg, *Long inquiry before charges in Laquan McDonald shooting prompts scrutiny*, CHICAGO TRIBUNE, Nov. 25, 2015, http://my.chicagotribune.com/#section/-1/article/p2p-85154955/. Officer Van Dyke was charged November 24, 2015 with first-degree murder for the October 2014 shooting that left McDonald dead. The charges were announced a day before the anticipated release of the dash-cam video showing the shooting.

[140] Steve Schmadeke, *2 petitions seek special prosecutor in Laquan McDonald shooting case*, CHICAGO TRIBUNE, Feb. 26, 2016, http://my.chicagotribune.com/#section/-1/article/p2p-86031361/.

[141] Tonya Francisco, et al., *Alvarez recuses herself in Jason Van Dyke case*, *WGN News*, May 5, 2016, http://wgntv.com/2016/05/05/chicago-officer-accused-in-laquan-mcdonalds-death-requests-guard/.

reelection bid.[142] Hopefully, an unbiased special prosecutor will be appointed who will fairly levy the case and bring out in court the still existing code of silence. The current mayor of Chicago has finally acknowledged that a code of silence exists in the CPD,[143] which is a major step forward as well as city attorneys admitting it exists in court.[144] However, until police officers or State's Attorneys are held accountable for it within the justice system, it will not end.

The issue of local and state police abusing their power during arrests has recently become an issue of national debate, particularly inspired by the shooting of Michael Brown and protests that followed in Ferguson, Missouri in August 2014,[145] and a multitude of other incidents (including the cases of Eric Garner, Walter Scott, and Freddie Gray) involving police brutality in which unarmed African American men have been shot by police officers.[146]

---

[142] Dana Ford, *Anita Alvarez concedes bid for third term in Chicago, CNN News*, Mar. 15, 2016, http://www.cnn.com/2016/03/15/politics/anita-alvarez-election/.

[143] Mayor Rahm Emanuel, Address on Police Accountability to Chicago City Council, December 9, 2015. Full text of speech *available at* http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2015/December/12.9.15MREremarks.pdf (referring to the code of silence as "the tendency to ignore, deny or in some cases cover-up the bad actions of a colleague or colleagues."). However, Mayor Emanuel has not yet testified about it in court. *See* John Byrne, *Emanuel silent on potential 'code of silence' testimony*, CHICAGO TRIBUNE, May 25, 2016, http://my.chicagotribune.com/#section/-1/article/p2p-87322587/.

[144] Andy Grim & Fran Spielman, *City admits 'code of silence,' but Rahm may still have to testify*, CHI. SUN-TIMES, May 20, 2016, http://chicago.suntimes.com/news/code-of-silence-exists-in-cpd-city-attorneys-admit-in-court/#news/code-of-silence-exists-in-cpd-city-attorneys-admit-in-court/.

[145] *See* Jim Salter, *A year later, AP reporter recalls early protests in Ferguson that launched national movement, U.S. News and World Report* (Aug. 3, 2015), *available at* http://www.usnews.com/news/us/articles/2015/08/03/year-later-ap-reporter-recalls-origins-of-ferguson-movement; *see also* Cheryl Corley, *Ferguson Activists Hope that Momentum Sparks a National Movement*, NPR, April 5, 2015, *available at* http://www.npr.org/2015/04/06/396780902/ferguson-activists-hope-that-momentum-sparks-a-national-movement.

[146] *See* Sam Sinyangwe, *Why do US police keep killing unarmed black men?* BBC NEWS (May 26, 2015), *available at* http://www.bbc.com/news/world-us-canada-32740523. "Black people are three times more likely to be killed by police in the United States than white people. More unarmed black people were killed by police than unarmed white people last year. And that's taking into account the fact that black people are only 14% of the population."

Cases in Cook County like the shooting of Laquan McDonald, and others like it around the country, indicate attitudes present in Area 2 still exist today and must be addressed with the gravity, care, and concern they deserve by police officers and prosecutors in order to hold those responsible accountable.

## CONCLUSION

No single trial can fully illustrate the tragic miscarriages of justice permitted to continue for so long in Area 2. Broad prosecutorial misconduct within the CCSAO shielded police from criminal prosecution and allowed the imprisonment of hundreds of defendants with illegally obtained confessions. Victims continue to bring civil suits to this day that have cost Chicago and Cook County nearly $100 million.[147] Although there has never been an adequate, impartial investigation into Area 2, there has at least been some degree of justice.

In 2010, Jon Burge was charged with obstruction of justice and perjury by the U.S. Attorney's Office for lying under oath about the torture of criminal suspects.[148] At a federal trial in 2011 numerous tortured victims testified in detail about their torture and Mr. Burge "denied he ever tortured suspects or condoned its use, saying that he had never witnessed a cop abusing a suspect in his 30 years with the department."[149] Mr. Burge was convicted and sentenced to 4 and 1/2 years in prison.[150] He served the time and was released in 2015.[151]

---

[147] CBS Crimesider Staff, *How Chicago racked up a $662 million police misconduct bill*, *CBS News*, March 21, 2016, *available at* http://www.cbsnews.com/news/how-chicago-racked-up-a-662-million-police-misconduct-bill/ ("Burge cases -- including settlements and outside lawyers -- have cost the city more than $92 million").

[148] *U.S. v. Burge*, 2011 WL 167230 (N.D. Ill. 2011).

[149] Jeremy Gorner, *Former Chicago police Cmdr. Jon Burge released from home confinement*, CHICAGO TRIBUNE, February 15, 2015, *available at* http://my.chicagotribune.com/#section/-1/article/p2p-82812523/.

[150] G. Flint Taylor, *Judge Sentences Chicago Police Commander Jon Burge in Torture Case*, Police Misconduct and Civil Rights Report, Vol. 10, No. 2 (March/April 2011), *available at* http://peopleslawoffice.com/wp-content/uploads/2012/02/Police-Misconduct-Civil-Rights-Law-Report-Burge-Sentencing.pdf.

[151] Gorner, *supra* note 161. "Burge continues to generate controversy for collecting a $4,000-a-month police pension despite costing the city tens of millions of dollars in legal costs because of lawsuits related to the torture and abuse."

Some continue examining the truth behind Area 2, if only to learn how and why it occurred in order to prevent future occurrences. G. Flint Taylor has continued to write articles on Jon Burge[152] as has John Conroy[153] who also wrote a book, *Unspeakable Acts, Ordinary People: The Dynamics of Torture*, that included a case study of Jon Burge and Area 2[154]. Lawyers at the People's Law Office and other civil rights lawyers continue defending Area 2 victims in civil suits, for which the city of Chicago recently paid $5.5 million in reparations to 57 Burge torture victims.[155]

However, the story of Area 2 still remains relatively obscured and unacknowledged. Former Mayor Daley has suggested that the torture was aberrational, a "shameful episode" that is better forgotten than reexamined.[156] After several protracted investigations, massive documentation, and expert testimony, all of which failed to hold anyone responsible, it is clear that Chicago's legal system is deeply flawed. The question should no longer be how defective the system is, but how it can be best repaired?

In the wake of the Laquan McDonald case, hopefully those concerned with human rights will shine a spotlight on Area 2, a clear example of the CPD's willingness to abuse its power and cover up when necessary. Chicagoans, and all Americans seeing widespread cases of police abuse[157] that has engendered a national

---

[152] G. Flint Taylor, *Time for Apology in Burge Cases*, CHICAGO SUN TIMES, June 25, 2012. G. Flint Taylor, *To Catch a Torturer: One Attorney's 28 Year Pursuit of Racist Chicago Police Commander Jon Burge*, IN THESE TIMES, Mar. 30, 2015, *available at* http://inthesetimes.com/article/17794/to-catch-a-torturer-one-attorneys-28-year-pursuit-of-racist-chicago-police.

[153] John Conroy, *Twenty Questions (for Mayor Daley)*, CHICAGO READER, May 11, 2007, *available at* http://www.chicagoreader.com/features/stories/twentyquestions/.

[154] John Conroy, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE (Knopf 2000). For an interview with John Conroy, *see* Justin Glawe's article *Talking to the Journalist Who Uncovered Police Torture in Chicago*, VICE NEWS, May 15, 2015, *available at* http://www.vice.com/read/talking-to-the-journalist-who-uncovered-police-torture-in-chicago-515.

[155] Fran Spielman, *Chicago pays $5.5M in reparations to 57 Burge torture victims*, CHICAGO SUN TIMES, January 4, 2016, *available at* http://chicago.suntimes.com/politics/chicago-pays-5-5m-in-reparations-to-57-burge-torture-victims/#politics/chicago-pays-5-5m-in-reparations-to-57-burge-torture-victims/.

[156] Press Statement of Richard M. Daley, July 21, 2006, at 1-2.

[157] *See* Shaun King, *Police Brutality is Getting Worse and Shows No Signs of Slowing Down*, Sept. 22, 2015 *available at* http://www.dailykos.com/stories/2015/9/22/1423847/-Police-brutality-is-getting-worse-and-shows-no-signs-of-slowing-down. *See also* Iris Baez, *Are the*

debate,[158] will likely reach the haunting realization that police misconduct is nothing new and that public officials and courts must find new ways to address this problem, as it is not going away anytime soon.

---

*Police Getting Away with Murder?*, *CNN*, August 12, 2014, *available at* http://www.cnn.com/2014/08/12/opinion/baez-police-garner-michael-brown-chokehold/ (referencing alleged police abuse and misconduct cases of Michael Brown, Eric Garner and others).

[158] Phillip Swarts, *Multiple police cases collide, forcing debate on tactics*, THE WASHINGTON TIMES, December 4, 2014, *available at* http://www.washingtontimes.com/news/2014/dec/4/ferguson-eric-garner-tamir-rice-police-cases-colli/?page=all.

Masthead Logo

DePaul Journal for Social Justice

Volume 3
Issue 2 *Spring 2010*

Article 2

January 2016

# When Judges Judge Themselves: The Chicago Police Torture Scandal and the Continuing Quest for Justice in the Case of People v. Keith Walker

Steven W. Becker

# WHEN JUDGES JUDGE THEMSELVES: THE CHICAGO POLICE TORTURE SCANDAL AND THE CONTINUING QUEST FOR JUSTICE IN THE CASE OF *PEOPLE V. KEITH WALKER*

BY
STEVEN W. BECKER*

> "No citation of authority is required for the proposition that in a civilized society torture by police officers is an unacceptable means of obtaining confessions from suspects."
>
> – Presiding Justice Wolfson, *People v. Cannon*, 688 N.E.2d 693, 696 (Ill. App. Ct. 1997).

Most people would be shocked to learn that Chicago, Illinois, has been plagued by a police torture scandal dating back more

* Assistant Appellate Defender, Office of the State Appellate Defender, First District, Chicago, Illinois; Senior Research Fellow, International Human Rights Law Institute, DePaul University College of Law, Chicago, Illinois; Co-Rédacteur en Chef, *Revue Internationale de Droit Pénal* (France).

The author represented Keith Walker, an alleged police torture victim, throughout his collateral appeal process, which generated two separate decisions by the Illinois Appellate Court in Mr. Walker's favor. *See* People v. Walker, No. 1-04-2212 (1st Dist. May 30, 2006) (Rule 23 Order) (vacating summary dismissal of post-conviction petition, remanding case for further proceedings, and ordering trial judge to recuse himself); People v. Walker, No. 1-07-0095 (1st Dist. Mar. 22, 2007) (Order) (reversing summary dismissal of post-conviction petition, remanding case for further proceedings, and ordering that case be heard before different judge).

The views expressed in this article are the author's own and do not necessarily reflect the views of the organizations with which he is affiliated.

This is an updated version of an article that first appeared in 78 REVUE INTERNATIONALE DE DROIT PÉNAL 209 (2007).

than 30 years. What is worse, however, is the realization that there is a continuing conspiracy to cover-up this festering wound on Illinois' criminal justice system by current and former prosecutors, one of whom is the current Mayor of Chicago,[1] police oversight organizations, and, most appallingly, members of the judiciary, who are sworn to uphold the law and are bound by ethical canons to be impartial arbiters in the resolution of legal controversies.

Sadly, because of the incestuous relationship between prosecutors and the judiciary in Cook County (which includes Chicago), torture victims, their lawyers, and human rights organizations have been forced to seek justice in international forums, because they have been unable to receive fair hearings at the trial court level. For example, in its conclusions and recommendations of May 18, 2006, the United Nations Committee Against Torture highlighted this entrenched effort to provide impunity to police detectives who are alleged to have extracted confessions by torture:

> The Committee is concerned with allegations of impunity of some of the State party's law-enforcement personnel in respect of acts of torture or cruel, inhuman, or degrading treatment or punishment. The Committee notes the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department.[2]

1 *See* John Conroy, *Twenty Questions: Lawyers for Police Torture Victims are Trying to Get Mayor Daley on the Stand. We've Got a Few Things to Ask Him Too*, CHI. READER, May 11, 2007, §1, at 1.

2 United Nations Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention*, ¶ 25, CAT/C/USA/CO/2 (May 18, 2006).

Similarly, lawyers and human rights groups have sought relief for these torture practices with the Inter-American Commission on Human Rights.[3]

In this regard, the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines "torture," in pertinent part, as: "[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . . ."[4] Article 2 of the Convention provides that "[n]o exceptional circumstances whatsoever . . . may be invoked as a justification of torture."[5] Furthermore, Article 15 of the Torture Convention specifies that "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."[6] Moreover, under Illinois law, it is a felony to compel a confession or information by force or threat.[7]

## Brief Overview of Police Torture in Chicago

It is well documented that between 1973 and the fall of 1991, at Detective Areas 2 and 3 of the Chicago Police Department, Commander Jon Burge and detectives working under his command allegedly tortured more than 100 criminal suspects by

---

3 *See* Steve Ivey, *Human-Rights Group Asked to Aid Burge Probe: International Panel is Arm of the OAS*, Chi. Trib., Oct. 15, 2005, § 1, at 9.

4 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1, ¶ 1, U.N. GAOR 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (Dec. 10, 1984).

5 *Id.* at art. 2, ¶ 2.

6 *Id.* at art. 15.

7 *See* 720 Ill. Comp. Stat. 5/12-7(a) (2006) ("[A] person who, with intent to obtain a confession, statement or information regarding any offense, inflicts or threatens imminent bodily harm upon the person threatened or upon any other person commits the offense of compelling a confession or information by force or threat.").

methods including electric shock to the genitals, "baggings" (i.e., suffocation by plastic typewriter cover or bag), "Russian roulette," mock executions, and beatings.[8] The gravity of these torture practices first surfaced in connection with the Andrew Wilson case.[9] In September 1990, internal investigator Michael Goldston issued the following conclusions after studying numerous cases of alleged torture that occurred at Area 2 police headquarters over a period of more than a decade:

> In the matter of alleged physical abuse, the preponderance of the evidence is that abuse did occur and that it was systematic. The time span involved covers more than ten years. The type of abuse described was not limited to the usual beating, *but went into such esoteric areas as psychological techniques and planned torture.* The evidence presented by some individuals convinced juries and appellate courts that personnel assigned to Area 2 engaged in methodical abuse.
>
> The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and

8 *See* CENTER ON WRONGFUL CONVICTIONS, NORTHWESTERN UNIVERSITY SCHOOL OF LAW, REPORT ON THE FAILURE OF SPECIAL PROSECUTORS EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE SYSTEMIC POLICE TORTURE IN CHICAGO 31-34 (Apr. 24, 2007) [hereinafter REPORT ON THE FAILURE OF SPECIAL PROSECUTORS], *available at* http://www.law.northwestern.edu/cwc/issues/causesandremedies/Policemisconduct/Torture/TortureReport.pdf; John Conroy, *Deaf to the Screams: The Next State's Attorney to Investigate Police Torture in Chicago Will be the First*, CHI. READER, Aug. 1, 2003, at 1.

9 For a detailed account of the history of the Andrew Wilson case, see JOHN CONROY, UNSPEAKABLE ACTS, ORDINARY PEOPLE: THE DYNAMICS OF TORTURE (2000). *See also* FRANCINE J. SANDERS, OFFICE OF PROFESSIONAL STANDARDS, CHICAGO POLICE DEPARTMENT, REPORT OF INVESTIGATOR FRANCINE SANDERS, STAR #28, OFFICE OF PROFESSIONAL STANDARDS, RE: ANALYSIS OF WILSON CASE (Oct. 26, 1990).

> perpetuated it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents in which the Area 2 offices are named as the location of the abuse.[10]

Later that year, Amnesty International issued its own directive seeking an investigation into police torture practices in Chicago.[11]

The federal courts in Chicago subsequently came to the same conclusion about the systemic nature of police torture in Chicago. In 1999, a United States District Court judge wrote:

> It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis.[12]

Likewise, Judge Diane Wood of the United States Court of Appeals for the Seventh Circuit explained that "a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department."[13]

---

10 MICHAEL GOLDSTON, OFFICE OF PROFESSIONAL STANDARDS, CHICAGO POLICE DEPARTMENT, REPORT OF INVESTIGATOR MICHAEL GOLDSTON, STAR #73, OFFICE OF PROFESSIONAL STANDARDS, RE: HISTORY OF ALLEGATIONS OF MISCONDUCT BY AREA TWO PERSONNEL 3 (Sept. 28, 1990) (emphasis added).

11 Amnesty International, United States of America: Allegations of Police Torture in Chicago, Illinois, AMR/51/42/90 (Dec. 1990).

12 United States ex rel. Maxwell v. Gilmore, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999).

13 Hinton v. Uchtman, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring).

Most stunning, however, was Illinois Governor George Ryan's address at the DePaul University College of Law on January 10, 2003, in which he courageously excoriated the state of the criminal justice system in Illinois and then pardoned four death row inmates who had been tortured by Area 2 detectives and whom he concluded were innocent.[14] Interestingly, Governor Ryan pinpointed the judiciary as the entity most responsible for failing to render justice in these cases:

> What I can't understand is why the courts can't find a way to act in the interest of justice. Here we have four more men who were wrongfully convicted and sentenced to die by the state for crimes the courts should have seen they did not commit. We have evidence from four men who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provide.
>
> They are perfect examples of what is so terribly broken about our system.
>
> These cases call out for someone to act. They call out for justice, they cry out for reform.[15]

Despite repeated efforts to effect reform, as described below, the judiciary in Cook County has, almost without exception, remained deaf to Governor Ryan's call.

## Bias in the Judiciary and the Special Prosecutors' Report

On April 5, 2001, a petition was filed with the chief judge of the Cook County Criminal Court seeking the appointment of a special prosecutor to investigate allegations of "torture, perjury,

14 George Ryan, Governor of Illinois, Address at the DePaul University College of Law, at 12 (Jan. 10, 2003) (on file with author).
15 *Id.*

obstruction of justice, conspiracy to obstruct justice, and other offenses by police officers under the command of Jon Burge at Area 2 and later Area 3 headquarters in the City of Chicago during the period from 1973 to the present."[16] The petition sought the appointment of a special prosecutor, in part, on the grounds that the Cook County State's Attorney's Office and, more specifically, Richard A. Devine, the then-Cook County State's Attorney, labored under a *per se* conflict of interest, because his former law firm was paid more than $800,000 to represent Jon Burge and other officers in connection with torture allegations and that Devine, himself, had personally represented Burge.[17] On April 24, 2002, Presiding Judge Paul Biebel, Jr., granted the petition, wherein he ruled that State's Attorney Devine suffered under a *per se* conflict of interest, that the entire Cook County State's Attorney's Office was disqualified from further involvement,[18] and that Edward J. Egan should be appointed as special prosecutor, to be assisted by Robert D. Boyle.[19]

Soon thereafter, the torture victims sought to have their cases reassigned to judges outside of the Circuit Court of Cook County, because they asserted that it would be impossible for them to receive fair hearings on the grounds that an overwhelming majority of the sitting judges in the Felony Division of the Cook County Criminal Court, and in the Cook County judiciary, in general, had previous involvement with Area 2 or Area 3 tor-

16 Petition for Appointment of a Special Prosecutor at 1, In re Appointment of Special Prosecutor, No. 2001 Misc. #4 (Apr. 5, 2001).

17 *Id.* at 7-10.

18 *See* Jeff Coen, *State to Get Burge Cases; Judge Removes County Prosecutors Over Possible Conflicts*, CHI. TRIB., Apr. 10, 2003, Metro, § 2, at 1 (discussing Judge Biebel's April 9, 2003 order for the Illinois Attorney General's Office to take over cases involving post-conviction petitions in the Burge torture cases).

19 Memorandum Opinion and Order at 7-8, In re Appointment of Special Prosecutor, No. 2001 Misc. #4 (Apr. 24, 2002).

ture cases.[20] In particular, the petition pointed out the startling fact that 50 of the 61 felony court judges in Cook County were either, *inter alia*, former prosecutors during the period in which statements allegedly coerced by torture were obtained, former police detectives or officers, or attorneys who had defended police officers in civil actions.[21] In addition, nearly one-third of these judges had direct and material involvement in the Burge torture cases.[22] Accordingly, the petitioners sought an impartial forum to have their cases heard because

> [g]iven the myriad of personal and professional relationships between the sitting judges and present and former Cook County [Assistant State's Attorneys], it would create an impermissible conflict of interest and raise an appearance of impropriety, to allow Cook County Judges to preside over these torture cases in which they may have to weigh the credibility of their present and former colleagues and generally make findings which could be viewed as undermining the integrity and reputation of the [State's Attorney's Office], the Cook County judiciary, and the entire Cook County criminal justice system.[23]

On April 9, 2003, Chief Judge Biebel denied the petitioners' request to have their cases transferred out of Cook County.[24] In declining to grant the relief sought, he wrote, "The removal of Petitioners' cases from Cook County would, in essence, be an acknowledgement that the judges therein are incapable of fulfil-

---

20 *See* Memorandum in Support of Petition to Reassign Petitioners' Cases to Judges Outside the Circuit Court of Cook County at 1-3, In re Appointment of Special Prosecutor, No. 2001 Misc. #4 (July 24, 2002).

21 *Id.* at 4.

22 *Id.* at 4-5.

23 *Id.* at 3.

24 Conroy, *supra* note 8.

ling their duty."[25] Unfortunately, as evidenced by Keith Walker's case, which is detailed in the next section, the judiciary has demonstrated, not only its inability, but also, its conscious refusal to adjudicate police torture cases in an impartial manner.

In July 2006, after spending an estimated seven million dollars,[26] the Special Prosecutors issued their Report (Special Prosecutors' Report or Report), in which they concluded that, although "prisoner abuse" occurred at Areas 2 and 3 under Commander Jon Burge, the statute of limitations barred any prosecutions of those responsible.[27] In the Report, however, the Special Prosecutors seemed to spend most of their time deflecting criticism from former prosecutors, including former Cook County State's Attorney and present Mayor Richard M. Daley, and discrediting the alleged torture victims rather than documenting the systemic pattern of torture that occurred in Chicago.[28] In fact, possibly the most absurd conclusion in the entire Report is the following: "Although the [Andrew] Wilson case was the focus of our investigation, it extended beyond the Wilson case until November, 1991 when Burge was suspended. Although there are numerous complaints of other acts of brutality which we suspect or believe occurred at Detective Areas 2 and 3, *we have not been able to uncover any proof that investigation and prosecution of any of those complaints was covered up by any police or prosecutive personnel.*"[29] Considering the overwhelming evidence of collusion between the prosecutors and police in the Chicago torture scandal, this remark seems more apropos for a law enforcement public relations campaign than

25 John Conroy, *Blind Justices: The Prosecutors Who Sent Police Torture Victims to Prison are Now the Judges Who Keep Them There*, CHI. READER, Nov. 30, 2006, at 24, *available at* http://www.chicagoreader.com/features/stories/blindjustices/.

26 Abdon M. Pallasch & Stefano Esposito, *The Burge Report: Suspects Tortured But It's Too Late for Charges*, CHI. SUN-TIMES, July 20, 2006, at 6.

27 EDWARD J. EGAN & ROBERT D. BOYLE, REPORT OF THE SPECIAL STATE'S ATTORNEY 16-36 (July 19, 2006).

28 *Id.* at 67-156, 169-265.

29 *Id.* at 152 (emphasis added).

for a serious legal study drafted by legitimate truth seekers. As veteran investigative journalist John Conroy adeptly pointed out, if the Special Prosecutors were correct in their estimation that torture occurred in "about half" of the 148 cases they reviewed, "[a]nd as no officer ever admitted to any coercion, [then] those detectives presumably committed hundreds of acts of perjury. In how many of those cases did a skeptical judge suppress a confession because he or she felt it had been coerced? Zero.[30] . . . Nor did the state's attorney's office prosecute a single officer for perjury, misconduct, or assault."[31]

Shortly after the release of the Special Prosecutors' Report, its entire credibility was placed at issue by revelations that Special Prosecutor Edward Egan had a nephew, a police detective at Area 2 police headquarters, who worked under Jon Burge,[32] and that his nephew spoke to him very highly of Burge during the investigation.[33]

Then, in April 2007, a coalition of more than 200 prominent lawyers, politicians, professors, and human rights organizations issued its *Report of the Failure of Special Prosecutors Edward J. Egan and Robert D. Boyle to Fairly Investigate Systemic Police Torture in Chicago* (Coalition Report).[34] According to the Coalition Report, "[t]he record strongly suggests that the Special

30 As Mr. Conroy notes, "Judge Earl Strayhorn once suppressed a confession for the 'oppressive atmosphere' in which it was given, but he didn't conclude that physical abuse had taken place." Conroy, *supra* note 25, at 22. *See* People v. Clemon, 630 N.E.2d 1120, 1121-24 (Ill. App. Ct. 1994) (affirming trial court's suppression of defendant's confession at Area 3 in 1991 on the grounds that it was obtained in a coercive environment).

31 Conroy, *supra* note 25, at 22.

32 Abdon M. Pallasch & Frank Main, *Torture Report and Family Ties: Top Investigator had Nephew on Burge's Staff*, CHI. SUN-TIMES, Aug. 6, 2006, at 7A; Abdon M. Pallasch & Frank Main, *Lawyer: Conflict in Burge Probe – Says Egan 'Understated' Nephew's Potential Role in Inquiry*, CHI. SUN-TIMES, Aug. 8, 2006, at 8.

33 Abdon M. Pallasch, *Police Torture Investigator Spoke Highly of Burge in '02*, CHI. SUN-TIMES, Aug. 16, 2006, at 10.

34 REPORT ON THE FAILURE OF SPECIAL PROSECUTORS, *supra* note 8.

Prosecutors' investigation and resultant Report, which cost the taxpayers of Cook County $7 million, were driven, at least in part, by pro-law enforcement bias and conflict of interest, were riddled with omissions, inconsistencies, half truths, and misrepresentations, and reflect shoddy investigation and questionable prosecutorial tactics and strategies."[35] Among other deficiencies, the Coalition Report alleged that the Special Prosecutors "[c]onducted an investigation . . . calculated to obfuscate the truth about the torture scandal"; "[i]gnored a wealth of evidence establishing that there was a widespread and continuing cover-up of the torture scandal – a conspiracy of silence – implicating high officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office"; and "[f]ailed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal."[36]

In October 2008, however, a federal indictment was issued against former Chicago Police Commander Jon Burge, alleging that Burge committed perjury and obstruction of justice in connection with his responses in civil litigation, in which he denied that he tortured or physically abused suspects, and likewise, denied knowledge of the use of such tactics by those officers working under his command.[37] In addition, the U.S. Attorney's Office announced that "the torture investigation is ongoing and further charges against other former officers could be forthcoming."[38]

---

35 *Id.* at 48.

36 *Id.* at 3.

37 Press Release, U.S. Dep't of Justice, U.S. Indicts Former Chicago Police Cmdr. Jon Burge on Perjury, Obstruction of Justice Charges Related to Alleged Torture and Physical Abuse by Burge and Other Officers (Oct. 21, 2008) (on file with author). *See* Steve Mills & Jeff Coen, *Feds Catch Up with Burge: Notorious Ex-Chicago Commander Charged with Lying About Torture*, CHI. TRIB., Oct. 22, 2008, at 1, 23; Natasha Korecki et al., *Feds: It's Just the Beginning – Feds Will Try to Prove Ex-Cop Tortured Suspects and Knew that Other Officers Did, Too*, CHI. SUN-TIMES, Oct. 22, 2008, at 2-3.

38 Mike Robinson, *Burge Accused of Lying Under Oath About Torture*, CHI. DAILY L. BULL., Oct. 21, 2008, at 1.

## The Case of Keith Walker

On December 1, 2006, the *Chicago Reader* newspaper ran a cover story by John Conroy entitled, *Blind Justices? The Prosecutors who Sent Police Torture Victims to Prison are Now the Judges who Keep Them There.*[39] The article concerned the almost insurmountable hurdles faced by Keith Walker in obtaining a fair hearing on his torture allegations and exposed, in no uncertain terms, the bias faced by torture victims in the Cook County Criminal Court.[40] The article, not only had an immediate impact on judges, but also, helped to rejuvenate the call for justice with respect to the Burge torture scandal. In this latter regard, on December 8, 2006, Dorothy Brown, the well-respected Clerk of the Circuit Court of Cook County and then-candidate for Mayor of Chicago, held a press conference at the Dirksen Federal Building, in which she called for a renewed investigation by the United States Attorney's Office into the Chicago police torture cases,[41] specifically relying on the revelations contained in Conroy's article.[42]

---

39 *See supra* note 25.

40 *See generally Id.*

41 *See* Dorothy Brown, Statement on Federal Request for Probe of Alleged Cover-Up of Burge Torture Cases, Dec. 8, 2006 (on file with author). My thanks to John Davis, Ms. Brown's press secretary, for providing me with a copy of her remarks.

42 With reference to the *Chicago Reader* article, Ms. Brown stated:

> I, like so many residents of Chicago and around the world, have been appalled by these despicable acts. But people are even more horrified by the apparent "conspiracy" to cover them up. The spector of such a conspiracy was raised to new heights this past week, by John Conroy's article in the Chicago Reader.

*Id.* at 3.

### *A. Pertinent Facts of Mr. Walker's Case*

Keith Walker was charged with, *inter alia*, first degree murder and attempted armed robbery of Shawn Wicks in 1991.[43]

Prior to trial, Walker filed a motion to suppress his confession, alleging that in June 1991 he was taken to the police station and interrogated, during which he was beaten about the head and face with fists, kicked with feet, and subjected to electric shock by means of an electric box that was placed on his skin.[44] In addition, the motion alleged that Walker was later arrested on July 2, 1991, and then gave a statement "as a result of fear and dread of repeated and renewed beatings and e[l]ectric box treatment."[45]

At the hearing on the motion to suppress statements, the State called four detectives and one assistant state's attorney. The lead detective on Walker's case, Detective Daniel McWeeny, a close associate of Jon Burge,[46] testified that he interrogated Walker on a number of occasions at Area 3 police headquarters between June 3 and June 4, 1991. McWeeny denied that Walker was subject to any physical abuse or torture by himself or anyone he had seen. The three other detectives called by the State gave a similar list of denials that Walker had been subject to physical coercion.

Nick Ford, the assistant state's attorney (ASA) who testified at the hearing, stated that he held several lengthy conversations

---

43 The facts are taken, unless otherwise noted, from Walker's briefs in his first appeal from the summary dismissal of his post-conviction petition. *See* Opening Brief at 5-9, 16-19, People v. Walker, No. 1-04-2212 (filed Nov. 2, 2005) [hereinafter Opening Brief]; Supplemental Brief at 2, People v. Walker, No. 1-04-2212 (filed Feb. 24, 2006) [hereinafter Supplemental Brief].

44 Opening Brief, *supra* note 43, at 5.

45 *Id.*

46 Detective McWeeny was granted immunity by the Special Prosecutors toward the latter portion of their investigation. *See* Steve Mills & Maurice Possley, *3 Burge Cops Get Immunity in Torture Case*, CHI. TRIB., Dec. 2, 2005, at 1.

with Walker on July 3, 1991, in connection with securing a statement from Walker. ASA Ford stated that he obtained an oral and written statement from Walker. In addition, ASA Ford denied that he or anyone in his presence subjected Walker to any type of physical coercion or psychological coercion.

Walker testified as the sole defense witness. Walker testified that between June 3 and June 4, 1991, he was interrogated in an interview room at Area 3, in which he was handcuffed to the wall. Walker testified that on the evening of June 3, 1991, he was hit in the face and kicked in his left leg by a detective. Walker further stated that he was jolted by a black electric shock box twice on the first day of his interrogation and twice on the second day. In addition, Walker testified that McWeeny attempted to get him to sign a written statement during his first night in custody. Based on a credibility assessment, the judge denied the suppression motion.

Following the bench trial, in which his confession featured prominently, Walker was convicted of first degree murder and attempted armed robbery. Walker was sentenced to natural life in prison.

On direct appeal, the sole issue raised involved the trial court's decision to admit the victim's questionable identification of Walker as the shooter as a dying declaration. The appellate court affirmed Walker's convictions and sentence in April 1997.

In January 1998, Nicholas R. Ford was appointed as a judge to the Circuit Court of Cook County.

In March 2004, Walker submitted a *pro se* post-conviction petition, which is a statutory means of collaterally challenging one's criminal conviction, alleging, *inter alia*, that he was denied constitutional due process of law because he was beaten and coerced by Detective McWeeny and others to give a confession. In his petition, Walker referred to numerous cases pertaining to a systemic and methodical practice of torture at Area 2 police headquarters, the Chicago Police Department's Office of Pro-

fessional Standards Reports concerning police torture, the firing of Commander Jon Burge, etc.

On April 20, 2004, Judge Nicholas R. Ford summarily dismissed Walker's petition, stating, "In total it is my view that this petition for post-conviction relief is patently frivolous and without merit and will be dismissed in accordance without finding."[47]

### *B. First Post-Conviction Appeal*

On appeal, Walker initially argued that the trial judge erred in summarily dismissing his post-conviction petition on the merits, because he properly stated the "gist of a constitutional claim,"[48] the legal standard required to advance the case to the next stage of collateral proceedings.[49] Yet, after full briefing was complete, Walker's appellate counsel discovered that Judge Ford should have recused himself from sitting on Walker's case. Accordingly, on February 24, 2006, Walker's attorney submitted a supplemental brief, arguing that "Judge Nicholas R. Ford was disqualified from ruling on Keith Walker's post-conviction petition because, prior to his elevation to the bench, Judge Ford was an assistant state's attorney and personally participated in Walker's case as a material witness for the State at Walker's suppression hearing and, in fact, personally took Walker's confession – the very confession that Walker alleges in his petition was extracted by torture."[50] Thus, Walker contended that Judge Ford's order summarily dismissing his petition was void, that the order must be reversed, and that the matter should be remanded for further post-conviction proceedings in front of another judge.[51]

---

47 Transcript of Proceedings at A3, People v. Walker, No. 91 CR 22976-01 (Apr. 20, 2004).

48 *See* Opening Brief, *supra* note 43, at 11.

49 *See* People v. Edwards, 757 N.E.2d 442, 445 (Ill. 2001).

50 Supplemental Brief, *supra* note 43, at 3.

51 *Id.*

## Part 2. Information About You (continued)

### ur U.S. Mailing Address

5.a. In Care Of Name (if any)

5.b. Street Number and Name: 2532 Dover Street

5.c. ☐ Apt. ☐ Ste. ☐ Flr.

5.d. City or Town: San Pablo

5.e. State: CA 5.f. ZIP Code: 94806

6. Is your current mailing address the same as your physical address? ☒ Yes ☐ No

**NOTE:** If you answered "No" to **Item Number 6.**, provide your physical address below.

### U.S. Physical Address

7.a. Street Number and Name

7.b. ☐ Apt. ☐ Ste. ☐ Flr.

City or Town

7.d. State 7.e. ZIP Code

### Other Information

8. Alien Registration Number (A-Number) (if any)
► A- 0 9 4 3 2 2 1 1 3

9. USCIS Online Account Number (if any)
►

10. Gender ☐ Male ☒ Female

11. Marital Status
☐ Single ☒ Married ☐ Divorced ☐ Widowed

12. Have you previously filed Form I-765? ☒ Yes ☐ No

13.a. Has the Social Security Administration (SSA) ever officially issued a Social Security card to you? ☒ Yes ☐ No

**NOTE:** If you answered "No" to **Item Number 13.a.**, skip to **Item Number 14.** If you answered "Yes" to **Item Number 13.a.**, provide the information requested in **Item Number 13.b.**

13.b. Provide your Social Security number (SSN) (if known).
► 6 1 3 3 7 6 1 0 6

14. Do you want the SSA to issue you a Social Security card? (You must also answer "Yes" to **Item Number 15., Consent for Disclosure**, to receive a card.) ☐ Yes ☒ No

**NOTE:** If you answered "No" to **Item Number 14.**, skip to **Part 2., Item Number 18.a.** If you answered "Yes" to **Item Number 14.**, you must also answer "Yes" to **Item Number 15.**

15. **Consent for Disclosure:** I authorize disclosure of information from this application to the SSA as required for the purpose of assigning me an SSN and issuing me a Social Security card. ☐ Yes ☒ No

**NOTE:** If you answered "Yes" to **Item Numbers 14. - 15.**, provide the information requested in **Item Numbers 16.a. - 17.b.**

**Father's Name**

Provide your father's birth name.

16.a. Family Name (Last Name)

16.b. Given Name (First Name)

**Mother's Name**

Provide your mother's birth name.

17.a. Family Name (Last Name)

17.b. Given Name (First Name)

### Your Country or Countries of Citizenship or Nationality

List all countries where you are currently a citizen or national. If you need extra space to complete this item, use the space provided in **Part 6. Additional Information.**

18.a. Country: EL SALVADOR

18.b. Country

In this regard, Illinois Supreme Court Rule 63(C)(1)(b), which is also known as Canon 3 of the Judicial Code, provides, in pertinent part:

> (1) A judge *shall* disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
>
> (b) the judge served as a lawyer in the matter in controversy . . . or *the judge has been a material witness concerning it.*[52]

Similarly, Illinois Supreme Court Rule 63(C)(1)(a) provides, in pertinent part, that "[a] judge shall disqualify himself " where the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding."[53] Walker supported his claim by referring to published judicial biographies and asserted that "it appears almost certain that the ASA 'Nick Ford' who testified against Walker at his suppression hearing in 1994 . . . is the same Judge Nicholas R. Ford who denied Walker's post-conviction petition in 2004."[54] Very uncharacteristically, the Attorney General filed no response brief.

On May 30, 2006, the First Division of the Illinois Appellate Court, First District, ruled in Walker's favor, vacated Judge Ford's summary dismissal of Walker's post-conviction petition, and remanded the case for further proceedings under Illinois' Post-Conviction Hearing Act (Act).[55] The appellate court further stated, "On remand, we direct Judge Ford to determine whether he is the same Nicholas Ford who testified at defendant's suppression hearing. If he answers that question in the affirmative, he should recuse himself and the matter should be reassigned."[56]

---

52 ILL. SUP. CT. R. 63(C)(1)(b) (West 2008) (emphasis added).
53 Id. at § 63(C)(1)(a).
54 Supplemental Brief, *supra* note 43, at 7.
55 Rule 23 Order at 5, People v. Walker, No. 1-04-2212 (May 30, 2006).
56 *Id.*

Despite Judge Ford's express breach of a well-established canon of judicial conduct forbidding a judge from ruling on a case in which he was formerly a material witness (and, in this case, the violation was even more egregious because Ford took the very confession being challenged in the petition), the appellate panel was amazingly deferential to Judge Ford. In fact, the reviewing panel went out of its way to note in its Order that "[t]here is no indication that Judge Ford was aware of this conflict or that he was motivated or biased in his decision."[57] What is one possible explanation for this overly "compassionate" treatment of Judge Ford? One need look no further than the author of the appellate court's decision in Walker's case, Justice Margaret Stanton McBride.[58] As detailed extensively by John Conroy, Justice McBride, like Judge Ford, was a former assistant state's attorney and was, herself, involved in several high-profile Burge torture cases, having personally taken Derrick King's confession in 1980 and also having been put "on notice" by the judiciary in 1986 to investigate Aaron Patterson's claims that he was tortured.[59] Significantly, in 2000, the Illinois Supreme Court reversed the dismissals of both King and Patterson's post-conviction petitions and ordered that their cases be remanded for evidentiary hearings for a determination of whether their statements were coerced.[60]

After Walker's case returned to the trial court, Judge Ford recused himself.[61]

---

57 *Id.*
58 *Id.*
59 *See* Conroy, *supra* note 25, at 24.
60 People v. Patterson, 735 N.E.2d 616, 645 (Ill. 2000); People v. King, 735 N.E.2d 569, 576 (Ill. 2000).
61 Conroy, *supra* note 25, at 24.

### C. *Second Post-Conviction Appeal*

Following Judge Ford's recusal, Walker's case was re-assigned to Judge Lon Shultz.[62]

In its Order vacating Judge Ford's ruling, the appellate court specifically remanded Walker's case "to the circuit court for further [post-conviction] proceedings under the Act. 725 ILCS 5/122-4 through 122-6 (West 2004)."[63] By referring to section 122-4 of the Act, the appellate court explicitly remanded the case for "second-stage" post-conviction proceedings, where, if indigent, Walker would be entitled to the appointment of counsel and the opportunity to amend his *pro se* post-conviction petition.[64]

Yet, despite the appellate court's mandate that the case be remanded for second-stage proceedings, on October 11, 2006, Judge Shultz, treating Walker's case as if it were still in first-stage proceedings, summarily dismissed Walker's post-conviction petition without affording Walker the right to counsel or to amend his petition.[65]

In an effort to avoid an unnecessary and time-consuming appeal, Walker submitted a timely motion in the trial court to vacate Judge Shultz's summary dismissal order, pointing out that such a ruling was contrary to the express mandate of the appellate court and requesting that he be entitled to his statutory rights of appointment of counsel and amendment.[66] Judge Shultz, however, denied Walker's request and let his previous order stand.[67]

---

62 Motion for Summary Remand at 3, People v. Walker, No. 1-07-0095, (filed Mar. 6, 2007) [hereinafter Motion for Summary Remand].
63 Rule 23 Order at 5, People v. Walker, No. 1-04-2212 (May 30, 2006).
64 *See* 725 ILL. COMP. STAT. 5/122-4 (2004).
65 Order at 10, People v. Walker, No. 91 CR 22976 (Oct. 11, 2006) (Shultz, J.).
66 Motion to Vacate the Order of October 11, 2006 and Proceed with Post-Conviction Proceedings Pursuant to Appellate Court Mandate at 2, People v. Walker, No. 91 CR 22976 (01) (filed Nov. 8, 2006).
67 Motion for Summary Remand, *supra* note 62, at 3.

Why would Judge Shultz, an experienced trial judge presumably well acquainted with post-conviction procedures, openly disregard the appellate court's express mandate, when the law is unequivocal that where a case is remanded by the appellate court with specific directions as to the action to be taken, it is the duty of the trial court to follow those directions?[68] Again, one possible explanation may be tendered for consideration. Like Judge Ford, Judge Shultz was a former assistant state's attorney, and he personally prosecuted Lonza Holmes, who testified that he was tortured by Jon Burge.[69] In addition, when they were assistant state's attorneys, ASA Nick Ford took over one of Shultz's most high-profile cases when Shultz was elevated to the bench.[70] Could Judge Shultz's concern over whether a fellow judicial colleague (and former prosecutor) might be implicated in a torture case have had any bearing on his decision to summarily deprive Walker of his statutory rights and to callously ignore the appellate court's mandate?

Following Judge Shultz's refusal to vacate his order, Walker filed a Motion for Summary Remand in the appellate court, requesting, not only that Shultz's order summarily dismissing Walker's post-conviction be reversed, but also, that Shultz be removed off the case because of his former involvement in a Burge torture case and his close pre-elevation relationship with Nick Ford: "These circumstances lead even a casual observer to question whether Judge Shultz might potentially be motivated

---

68 *See* Norris v. Nat'l Union Fire Ins. Co., 857 N.E.2d 859, 863 (Ill. App. Ct. 2006) ("On remand, the trial court was bound to follow this court's directions."); Harris Trust & Sav. Bank v. Otis Elevator Co., 696 N.E.2d 697, 700 (Ill. App. Ct. 1998) (followed by *Norris*); Foster v. Civil Serv. Comm'n, 627 N.E.2d 285, 290 (Ill. App. Ct. 1993) ("When a reviewing court remands a matter with specific instructions, the trial court is powerless to undertake any proceedings beyond those specified therein."); Aguilar v. Safeway Ins. Co., 582 N.E.2d 1362, 1365 (Ill. App. Ct. 1991) (noting that where a reviewing court remands cause with specific instructions, "they must be followed exactly").

69 Conroy, *supra* note 25, at 24.

70 *Id.*

by self-interest to not treat Walker's torture claim fairly."[71] The Attorney General filed an opposition to Walker's motion.[72]

On March 22, 2007, the appellate court granted Walker's motion for summary remand, reversed the trial court's summary dismissal of Walker's post-conviction petition, and remanded the case again for second-stage post-conviction proceedings in front of a judge other than Judge Shultz.[73] Interestingly, the decision was signed by all four justices on the panel of the First Division, including Presiding Justice McBride.[74]

### *D. Second-Stage Post-Conviction Proceedings on Remand*

On remand, Walker's case was re-assigned to Judge Joseph Claps.[75] Standish Willis, a veteran Chicago attorney, took over Walker's case and, in December 2008, filed a detailed amended post-conviction petition on Walker's behalf,[76] in which he contended that: (1) Walker's tortured confession violated his constitutional rights;[77] (2) the State transgressed *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to turn over information favorable to Walker, which was either exculpatory or impeaching;[78] (3) trial counsel and appellate counsel on direct appeal were ineffective for failing to present evidence of and to investigate

71 Motion for Summary Remand, *supra* note 62, at 5.

72 Opposition to Motion for Summary Remand, People v. Walker, No. 1-07-0095 (served Mar. 20, 2007).

73 Order at 1, People v. Walker, No. 1-07-0095 (Mar. 22, 2007).

74 This is the first time that the author has ever received an order signed by all four justices. Presumably, there may have been a concern that, due to the subject matter, Justice McBride should have recused herself from the case, and therefore, to legitimate the decision, the order was signed by three additional justices.

75 Cook County Circuit Court Docket Sheet at 113, People v. Walker, Case No. 91 CR 2297601.

76 Amended Post-Conviction Petition, People v. Walker, No. 91 CR 22976 (filed Dec. 18, 2008) (on file with author).

77 *Id.* at 14-17.

78 *Id.* at 17-20.

claims of police torture;[79] and (4) Walker was actually innocent, "since the evidence at trial included essentially, only suspect testimony from a known torturer to support Walker's conviction . . . ."[80]

The Illinois Attorney General's Office filed a formal answer to Walker's amended petition arguing, *inter alia*, that "[b]ecause petitioner's allegations of police abuse lack credibility, his post-conviction petition is both untimely and his coercion claim is forfeited, as there is no basis to excuse his untimeliness or forfeiture."[81]

In response,[82] Walker cited to new evidence, which had surfaced since Walker's conviction, indicative of a pattern and practice of torture by Chicago police detectives, including the fact that Walker's co-defendant, Tyshawn Ross, had been granted an evidentiary hearing based on his allegation that he had likewise been subject to electric shock treatment by Detective McWeeny and other Burge detectives,[83] that Detective McWeeny had repeatedly invoked his Fifth Amendment privilege against self-incrimination in various civil proceedings,[84] and that three Chicago police detectives/officers had come forward confirming abusive tactics by Burge and his "midnight crew," as well as the existence of an electrical shock box.[85] In addition, Walker pointed to the stunning train of events in the case of James Andrews,[86] who also alleged that he was abused by Detective

79 *Id.* at 20-22.
80 *Id.* at 22.
81 Answer, People v. Walker, No. 91 CR 22976 (filed Mar. 20, 2009) (on file with author).
82 Walker's Response to the State's Answer to His Amended Post-Conviction Petition, People v. Walker, No. 91 CR 22976 (filed Apr. 29, 2009) (on file with author).
83 *Id.* at 6-7.
84 *Id.* at 7-9.
85 *Id.* at 9-10.
86 *Id.* at 5-6. James Andrews' case would never have come to light without the indefatigable work of Jennifer Blagg, a former colleague of the author's at the Office of the State Appellate Defender.

McWeeny, *viz.*, the trial court's August 2007 grant of a new hearing on Andrews' motion to suppress statements after it conducted a full evidentiary hearing,[87] Judge Sumner's vacatur of Andrews' 1984 conviction and order for a new trial,[88] and the Illinois Attorney General's dramatic February 2008 decision not to prosecute Andrews further, thereby dropping two murder charges.[89]

On August 7, 2009, Judge Claps ordered that the case advance to third-stage post-conviction proceedings and rejected the Attorney General's request to deny Walker's petition.[90] At the time of this writing, Keith Walker is presently awaiting a full evidentiary hearing on his torture claims.

## Conclusion

Mr. Walker has been in prison now for close to 20 years, and his case is one of the extremely rare cases that has returned to the trial court with the opportunity for him to prove that his confession was coerced by electric shock, a method of torture well-documented as having been employed by Jon Burge and his confederates against criminal suspects. What is more disheartening, however, is that it is even more rare to find a judge in Cook County untainted by Chicago's torture scandal, let alone a judge who is willing to impartially hear a torture case and to objectively assess the evidence, even if it implicates police detectives, former prosecutors, or fellow judges.

---

87 Order, People v. Andrews, No. 83 CR 4979 (Aug. 14, 2007).

88 Kayce T. Ataiyero, *Retrial Granted in '80s Killing: Defendant Says Cops Coerced Him into Confessing*, Chi. Trib., Oct. 16, 2007, at A1.

89 Dave Newbart, *State Drops Murder Case Tied to Burge: Man Claiming He was Tortured to Confess Won't Face New Trial*, Chi. Sun-Times, Feb. 2, 2008, http://www.suntimes.com/news/metro/773576,%20SCT-NWS-BURGE02.article.

90 Cook County Circuit Court Docket Sheet at 129, Case No. 91 CR 2297601.

The right to a fair hearing in front of a fair tribunal "requires not only the absence of actual bias but also the absence of the probability of bias."[91] Furthermore, the United States Supreme Court has declared that "justice must satisfy the appearance of justice."[92] Yet, as a result of its marked pro-law enforcement bias and its fraternity of former prosecutors, the Cook County judiciary has, up until very recently, remained adamantine as the final link in a continuing conspiracy to conceal a scandal that has corrupted Chicago for more than three decades. Judge Sumner's courageous rulings in the *Andrews* case clearly provide a welcome glimmer of hope.

The stain of injustice, however, will only seep deeper into the fabric of our society unless the judges of Cook County purge from their numbers those infecting the character of fairness in our criminal courts. Until that happens, one can only conclude, along with the Prophet Daniel, who interpreted the ominous handwriting on the wall, that "Thou art weighed in the balances, and art found wanting."[93]

---

91 People v. Hawkins, 690 N.E.2d 999, 1003 (Ill. 1998).
92 In re Murchison, 349 U.S. 133, 136 (1955). See also Caperton v. A.T. Massey Coal Co., Inc., 129 S. Ct. 2252, 2265 (2009) (holding that recusal was constitutionally mandated based solely upon an appearance of bias).
93 *Daniel* 5:27 (King James).

U.S. Department of Justice

*United States Attorney*
*Northern District of Illinois*

*Patrick J. Fitzgerald*
*United States Attorney*

*Federal Building*
*219 South Dearborn Street, 5th Floor*
*Chicago, Illinois 60604*
*(312) 353-5300*

FOR IMMEDIATE RELEASE
TUESDAY OCTOBER 21, 2008
www.usdoj.gov/usao/iln

PRESS CONTACTS:

| | |
|---|---|
| AUSA Jeffrey Cramer | (312) 886-7631 |
| AUSA Barry Miller | (312) 886-1325 |
| AUSA Sergio Acosta | (312) 353-1415 |
| Randall Samborn | (312) 353-5318 |

## U.S. INDICTS FORMER CHICAGO POLICE CMDR. JON BURGE ON PERJURY, OBSTRUCTION OF JUSTICE CHARGES RELATED TO ALLEGED TORTURE AND PHYSICAL ABUSE BY BURGE AND OTHER OFFICERS

CHICAGO – Former Chicago Police Commander **Jon Burge** was arrested today at his home in Florida on federal obstruction of justice and perjury charges for allegedly lying about whether he and other officers under his command participated in torture and physical abuse of one or more suspects in police custody dating back to the 1980s. Burge was charged with two counts of obstruction of justice and one count of perjury in a three-count indictment that was returned under seal by a federal grand jury last Thursday and unsealed today following his arrest by FBI agents from Chicago and Tampa.

The charges allege that Burge lied and impeded court proceedings in November 2003 when he provided false written answers to questions – known as interrogatories – in a civil lawsuit alleging that he and others tortured and abused people in their custody.

Burge, 60, of Apollo Beach. Fla., near Tampa and formerly of Chicago, was expected to appear later today in U.S. District Court in Tampa. He will appear at a later date in U.S. District Court in Chicago, where he will face prosecution.

The arrest and indictment were announced today by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois; Grace Chung Becker, Acting Assistant Attorney General for the U.S. Justice Department's Civil Rights Division; Robert D. Grant, Special Agent-in-Charge of the Chicago Office of the Federal Bureau of Investigation; and Steven E. Ibison, Special Agent-in-Charge of the FBI's Tampa Field Division.

"There is no place for torture and abuse in a police station. There is no place for perjury and false statements in federal lawsuits," Mr. Fitzgerald said. " No person is above the law, and nobody – even a suspected murderer – is beneath its protection. The alleged criminal conduct by defendant Burge goes to the core principles of our criminal justice system," he added.

"Throughout this nation, law enforcement officers make daily sacrifices in the pursuit of justice," said Acting Assistant Attorney General Grace Chung Becker. "It is imperative that we take these charges seriously but also bear in mind they do not reflect upon the conduct of the vast majority of law enforcement officers."

Mr. Grant said: "Everyday Chicago Police Officers execute their sworn duties lawfully with great skill, courage and integrity. Sometimes they do so with great peril, as we have been sadly reminded in recent weeks and months. But police officers have a special duty which is underscored by today's announcement. Police officers don't serve the public as judge and jury and they have a special responsibility to care for those within their custody, regardless of their alleged crimes. Today's announcement brings great shame on the career of retired Commander Jon Burge."

The investigation is continuing, the officials said.

According to the indictment, Burge was a Chicago Police Officer from 1970 to 1993. He was a detective at Area Two police headquarters on the city's south side from 1972 to 1974, and an Area Two sergeant from 1977 to 1980. From approximately 1981 to 1986, he was a lieutenant and supervisor of detectives working in the Area Two violent crimes unit. Subsequently, he was

commander of the Bomb and Arson Unit and, later, commander of Area Three detectives. Burge was suspended by the Chicago Police Department in 1991 and fired in 1993.

The indictment alleges that, on one or more occasions during the time that Burge worked in Area Two, Burge was present for, or participated in, the torture and physical abuse of persons in police custody. The indictment also alleges that during the time he worked as the lieutenant supervising Area Two violent crimes detectives, Burge was aware that detectives he supervised, on one or more occasions, engaged in torture and physical abuse of people in their custody.

Chicago Police Department regulations, as well as state and federal law, prohibited torture, physical abuse and other use of excessive force by police officers, the indictment states.

After 1991, a series of police brutality civil lawsuits were filed alleging that Burge and other detectives and police officers under his command participated in torture and abuse of suspects. One such case, *Hobley v. Burge, et al.*, 03 C 3678, was filed in 2003 in U.S. District Court in Chicago. The lawsuit alleged that plaintiff Madison Hobley was tortured and abused by police officers at Area Two headquarters in January 1987 in order to coerce a confession. The Hobley lawsuit included a specific allegation that police officers had placed a plastic bag over Hobley's head until he lost consciousness.

The Hobley lawsuit claimed that Burge was aware of a pattern of torture and abuse at Area Two police headquarters. The indictment does not, however, allege that Hobley was tortured or abused.

As part of the discovery process in Hobley's lawsuit, his attorneys served Burge with written interrogatories and Burge, in turn, provided written answers. It was material to the outcome of the case whether in fact Burge knew of or participated in torture and physical abuse of any person or persons in Chicago Police custody, the indictment states.

Count One charges Burge with obstruction of justice on Nov. 12, 2003, for allegedly corruptly obstructing, influencing and impeding an official proceeding by signing answers containing false

statements in response to two interrogatories in the Hobley litigation. According to the indictment, one question asked:

> whether you have ever used methods, procedures or techniques involving any form of verbal or physical coercion of suspects while in detention or during interrogation, such as deprivation of sleep, quiet, food, drink, bathroom facilities, or contact with legal counsel and/or family members; the use of verbal and/or physical threats or intimidation, physical beatings, or hangings; the use of racial slurs or profanity; the use of physical restraints, such as handcuffs; the use of photographs or polygraph testing; and the use of physical objects to inflict pain, suffering or fear, such as firearms, telephone books, typewriter covers, radiators, or machines that deliver an electric shock ....

While objecting to the question as overly broad, vague, ambiguous and calling for a legal conclusion, Burge answered:

> *I have never used any techniques set forth above as a means of improper coercion of suspects while in detention or during interrogation.*

The indictment states that another question asked whether Burge was aware of any Chicago Police Officer, including but not limited to officers under his command, ever using any of the methods, procedures or techniques that he was asked about in the previous question. Burge also objected to this questions and answered:

> *I am not aware of any.*

The indictment alleges that the italicized portion of these answers were false, as Burge well knew that he had participated in one or more incidents of physical coercion of suspects while the suspects were in detention and/or were being interrogated, and was aware of one or more other such events involving the abuse or torture of people in custody.

Count Two charges Burge with perjury on Nov. 25, 2003, for allegedly lying in sworn answers to a second set of interrogatories in the Hobley lawsuit. The indictment states the following question was asked:

> Is the manner in which Madison Hobley claims he was physically abused and/or tortured as described in Plaintiffs Complaint (including, for example, the allegation of

"bagging" with a typewriter cover) consistent with any other examples of physical abuse and/or torture on the part of Chicago Police officers at Area 2 which you observed or have knowledge of?

Burge answered:

*I have not observed nor do I have knowledge of any other examples of physical abuse and/or torture on the part of Chicago Police officers at Area 2.*

The italicized portion of this answer was allegedly false, as Burge well knew that he had observed, participated in, and had knowledge of one or more other examples of physical abuse and torture on the part of Chicago police officers at Area Two, including, but not limited to, abuse (suffocation) of a person by "bagging."

Count Three of the indictment charges Burge with obstruction of justice on Nov. 25, 2003, for allegedly corruptly obstructing, influencing and impeding an official proceeding by signing the answer that forms the basis of the perjury charge in Count Two.

The Government is being represented in court by Assistant U.S. Attorneys Jeff Cramer, Barry Miller and Sergio Acosta and Civil Rights Division Trial Attorney Betsy Biffl.

If convicted, Burge faces a maximum penalty of 20 years in prison on each count of obstruction of justice and 5 years in prison for perjury, and a $250,000 fine on each count. The Court, however, would determine the appropriate sentence to be imposed under the advisory United States Sentencing Guidelines.

The public is reminded that an indictment contains only charges and is not evidence of guilt. The defendant is presumed innocent and is entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt.

####

NEWS & POLITICS | FEATURE November 30, 2006

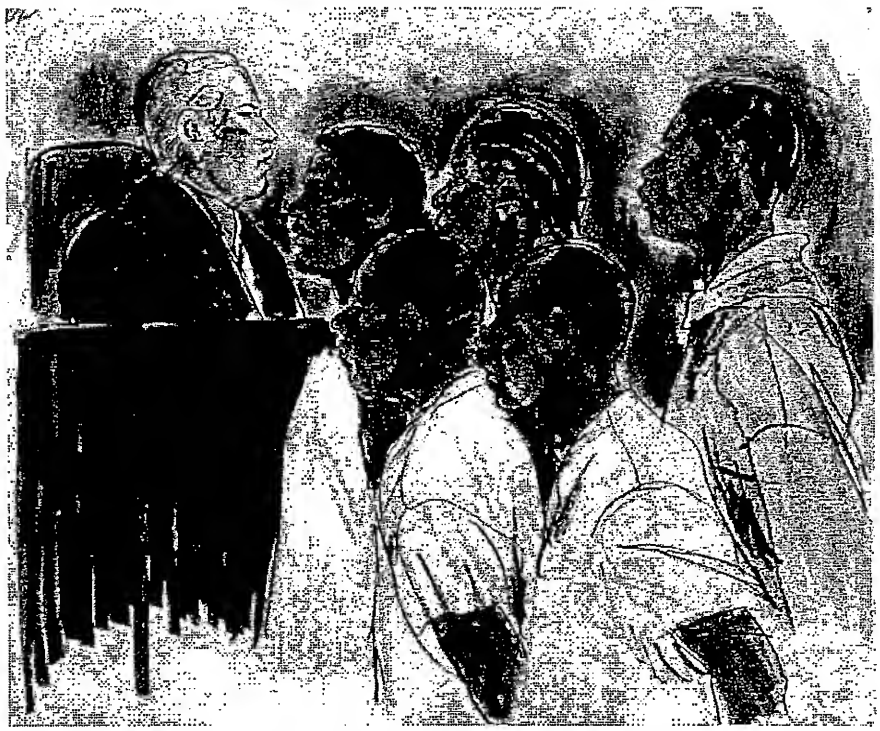


# Blind Justices?

The prosecutors who sent police torture victims to prison are now the judges who keep them there.

By John Conroy





Cook County circuit court judge Nicholas Ford, shown presiding over a 2002 case

AP PHOTO/CAROL RENAUD

Lawyers who defend police-torture victims in Chicago long ago reached a harsh conclusion about Cook County's criminal judges: most have a vested interest in refusing to acknowledge police brutality. Now these lawyers can point to a case so extreme it's almost funny: a judge who apparently ruled on his own performance as a prosecutor, deciding there was no taint to a

confession that the judge himself had written. Judge Nicholas Ford passed judgment on assistant state's attorney Nick Ford. Ford had no problem with Ford's work.

s a case that's unusual only in degree. Four years ago a group of 17 attorneys whose 12 clients alleged they'd been tortured submitted a remarkable petition to chief criminal court judge Paul Biebel. They wanted Biebel to disqualify the Cook County judiciary from any further involvement in their cases—in essence, to grant them a change of venue to some other county. The attorneys argued that 50 of Cook County's 61 criminal court judges had ties to institutions or individuals who'd benefit from there being no investigation of torture cases.

According to the petition, three of the 50 judges were former Chicago police detectives and two of those had worked with the notorious former police commander Jon Burge; three other judges had previously defended the city in lawsuits alleging police brutality; and 16 judges were former assistant state's attorneys directly involved in the torture cases, men and women who'd either testified on Burge's behalf at police board hearings that led to his firing or who'd taken confessions allegedly coerced by physical means, prosecuted suspects whose statements of guilt were allegedly obtained by torture, or supervised the prosecution of defendants alleging electric shock, suffocation, attacks on the genitals, severe beatings, or other physical abuse at the hands of Burge's detectives.

Even judges who as prosecutors had had no direct or supervisory participation in the torture cases were suspect, the petition argued, because they'd presumably want to protect their former colleagues. And it noted that six judges, all former ASAs, had appeared as witnesses on Burge's behalf at police board hearings when the city was trying to fire him for torture.

The core of the attorneys' argument—that judges with law enforcement or prosecutorial backgrounds cast a blind eye in police brutality cases—was made against a fluid judiciary. Judges retire and are replaced. New ones are hired to relieve caseloads. Yet it would seem the blind-eye infection alleged by the defense attorneys has persisted despite the changing cast of characters. This July, special prosecutors Edward Egan and Robert Boyle released the report of their investigation into alleged police torture by Burge and his detectives in the years 1973 to 1991. Boyle said he believed torture had occurred in "about half" of the 148 cases their staff examined during their four-year investigation. If he was right, detectives committed hundreds of acts of torture, because in abusing a victim they almost never stopped with a single act. And as no officer ever admitted to any coercion, those detectives presumably committed hundreds of acts of perjury. In how many of those cases did a skeptical judge suppress a confession because he or she felt it had

been coerced? Zero. (Judge Earl St. ,horn once suppressed a confession for the "oppressive atmosphere" in which it was given, but he didn't conclude that physical abuse had taken place.) And not ' single judge publicly recommended that any officer be prosecuted ɔr giving false testimony under oath.

Nor did the state's attorney's office prosecute a single officer for perjury, misconduct, or assault. And it's from the ranks of those prosecutors that most of today's criminal court judges have come.

The 15-year history of *People v. Keith Walker* has been written by judges with just the kinds of backgrounds that distressed those 17 petitioning lawyers. Walker, a 23-year-old African-American, was allegedly involved in a 1991 south-side dope deal and robbery in which a white customer from Arlington Heights was shot dead. After confessing, he was tried, convicted, and sentenced to natural life, but he maintained that his confession had been tortured out of him by Area Three detectives working under Jon Burge. In March 2004 Walker filed a postconviction petition that argued the circumstances of his confession deserved to be reexamined.

A postconviction petition, or PC, is a legal procedure that allows a prisoner who has exhausted his appeals in state court to ask a judge ɔ reexamine his case. To succeed, the petitioner must raise an issue that wasn't raised on appeal and must present the "gist of a constitutional claim." That is, he must argue that his rights under the state or federal constitution were substantially denied.

Many PC petitions are submitted by prisoners who can't afford attorneys to help them, and some arrive handwritten. Circuit court judges review the filings. Irritation with the number and quality of the petitions has led to the courthouse joke that "anyone with a pencil can write one," and in dismissing petitions judges often fall back on the boilerplate language of the statute, calling the motions "frivolous" or "patently without merit" or both.

Walker's petition, which stated that he "reads at a 4th grade level and [has] an IQ of 65 which is borderline retardation," was a pastiche of well-stated legal argument, seemingly lifted from other prisoners' filings, and sometimes inarticulate material focusing on his particular experience. He argued that his confession had been coerced by electric shock and should be reconsidered; in support he cited the 1993 firing of Commander Burge, the 1990 Goldston Report (Walker spelled it "Gholston"), which was an Office of Professional Standards document that concluded there'd been systematic torture at Area Two, and several higher court decisions in Area Two cases that awarded prisoners new hearings based on their claims of torture. While Burge's firing and the filing of the Goldston Report had occurred before Walker's trial, and thus could technically

be barred from consideration on a . . petition because they were not new evidence, the higher court decisions had all come after Walker was convicted, and several of them involved Detective Daniel McWeeny, the officer who had interrogated him.

Thus Walker's petition, while badly written and in places inaccurate (he wrongly alleged that McWeeny, whom he mostly referred to as McQueeny, had been fired over his participation in a torture case), did seem to meet the legal requirements. He made a constitutional claim (coercion in extracting a confession is unconstitutional) and raised an issue that had not been raised in his appeal. Even the fundamental fairness doctrine seemed applicable: in the years after Walker's trial, the Illinois appellate and supreme courts, finally convinced that torture might have taken place, had handed down several rulings that allowed for evidence of a pattern of abuse to be considered in Burge torture cases. That avenue of argument had been closed to Walker.

Walker's petition landed on the docket of Judge Ford, who on April 20, 2004, summarily dismissed it.

Although Illinois law requires that the court should specify "the findings of fact and conclusions of law it made in reaching its decision," the certified report of disposition consisted of the name of the judge, the date of the ruling, and four words: "post conviction etition dismissed." The judge saw no problem with Walker's confession, which had been handwritten by a prosecutor and signed by Walker. That prosecutor had testified at a pretrial hearing in Walker's case and had given his name under oath as "Nick Ford."

Once Walker's PC petition had been dismissed, Steven Becker of the Illinois appellate defender's office took on his case. Becker filed his first brief in November 2005, arguing that Walker's plea had met the legal standard necessary to reopen the case. The state responded in January, and Becker replied on February 10. On February 24, however, Becker changed course, filing a brief that attacked not the judge's decision but the judge himself. "According to Judge Ford's biography," Becker wrote, referring to *Sullivan's Judicial Profiles* and A Directory of State Judges in Chicago, "it appears almost certain that the ASA 'Nick Ford' who testified against Walker at his suppression hearing in 1994 is the same Judge Nicholas R. Ford who denied Walker's post-conviction petition in 2004." Becker said Judge Ford should have been disqualified.

The state, quite uncharacteristically, had nothing to say in reply. On May 30, a three-judge appellate court panel headed by Judge Margaret Stanton McBride directed Judge Ford "to determine whether he is the same Nicholas Ford who testified at defendant's

suppression hearing. If he answered that question in the affirmative, he should recuse himself and the matter should be reassigned."

Given the seriousness of Ford's gaffe—in a case involving a man serving natural life who claimed to have been tortured with electric shock—the language of McBride's order seems extraordinarily mild. "There is no indication that Judge Ford was aware of this conflict or that he was motivated or biased in his decision," McBride wrote.

Suppose he wasn't aware. Did Judge Ford, known to some courthouse regulars as "Quick Nick," read the petition so hastily that no bells rang? Could he have read the document and not recognized the name of the murder victim, Shawn Wicks? Was his memory so porous that he did not remember a case in which Wicks allegedly made a "dying declaration" to Detective McWeeny, identifying the perpetrators by hand squeezes (once for no, twice for yes)? Did he fail to recall a case that hinged on a confession he'd written, named a station house where he'd worked, and involved allegations of electric shock and the most notorious police commander of the last two decades—whose name, mentioned in print on a regular basis, never appears without the word "torture" in close proximity?

It may be true that Ford paid the case that little attention—though the idea seems damning on its face. It may also be true that the name Keith Walker meant nothing to Ford—though the case had yet another memorable aspect: Walker somehow managed to slip out of his handcuffs and disappear. He was rearrested after any injuries he might have suffered in his interrogation had had a month to heal. Ford did not return calls for comment.

Like Ford, Judge McBride was a former assistant state's attorney who'd had a brush with Burge torture cases. She served in the state's attorney's office from 1977 to 1987. In January 1980 she took the confession of Derrick King, a suspect in an armed robbery that had resulted in the shooting death of a store clerk. King later alleged that Area Two detectives had used a baseball bat to extract his confession, a statement taken by McBride in the presence of Detective Robert Dwyer. Dwyer's sister came forward in 2004 and said that her brother had told her, in Burge's presence, that in dealing with "niggers" they "beat the shit out of them, they throw them against walls, they burn them against the radiator, they smother them, they poke them with objects, they do something to some guys' testicles."

A witness for the state who came to the police station to view a lineup later testified that King's face was bruised and swollen—damage that could not be seen in the black-and-white photo of the suspect taken at the station. The witness's testimony was notable because he believed he'd been robbed by King and therefore had no discernible motive to help him. At a hearing on a motion to suppress King's confession, McBride testified that she'd heard no screams

coming from the interrogation roc. .. King was convicted, largely on the basis of his confession, and sentenced to death. (In January 2003, his sentence was commuted to life imprisonment by Governor George Ryan, who did the same for all death row inmates.)

In 2000 the Illinois Supreme Court ordered a new hearing on the issue of whether King's confession was voluntary. That hearing has never taken place, but if and when it does, McBride is likely to be called to testify. She declined an opportunity to answer questions for this article.

Six years after taking King's confession, McBride was the prosecutor on duty at a 1986 bond hearing when Aaron Patterson, charged with a double murder, said that he'd been suffocated with a plastic bag and beaten by detectives at Area Two and that an assistant state's attorney had "physically abused" him and "tried to force me to sign a written statement that he conjured up."

Judge Frank Gembala told McBride she was "on notice" to investigate Patterson's story, but the state's attorney's office has never produced documentation proving that any investigation took place. Patterson was convicted and sentenced to death, and Governor Ryan pardoned him in 2003.

And now McBride is an appellate judge. After her ruling returned the Walker case to the lower court, Judge Ford apparently determined that he and ASA Nick Ford were the same person, and the case was reassigned to Judge Lon Shultz.

Lon Shultz had been an assistant state's attorney for 16 years before becoming a judge in 1994, and his prosecutorial career overlapped with Nick Ford's. (In fact, Ford took over one of Shultz's more famous cases—the murder of Nick Martini, a west-side grocery store owner—after Shultz ascended to the bench.) Like Ford, Shultz had a history with the Burge gang: he'd prosecuted Lonza Holmes, who claimed Burge had beaten him with a phone book in 1985. In that case detectives told contradictory stories about Holmes's interrogation, but neither the judge nor the appellate court seemed to notice the contradictions.

By the time Shultz received the Walker case, the file included two affidavits mailed too late for Ford to have considered them. One was from Walker saying, "I been trying to get in school and better myself and the people here at stateville c.c. told me Im on a waiting list because I have life in jail and that im very depressing and Im on med. I take med. everyday 2 times a day! I try to kill myself of a crime I did not do and I have a doctor at stateville c.c. his name is Dr. Woods he talk to me once a month! he be trying to help me get my life in order." The other was from Stateville inmate Patrick Pursley, who indicated that he helped other inmates with legal

documents, that he'd helped Walk. , and that Walker could not read, could not grasp any law, and had no idea what "gist" meant.

Whether Shultz saw those documents is not clear. On October 11 he ammered Walker in a ten-page opinion that not only dismissed the prisoner's petition as frivolous and patently without merit but also denied his request for appointment of counsel. It was a ruling that, according to attorney Steven Becker, Shultz had no legal authority to make. The appellate court decision that sent the case back to the lower court specifically referred to Illinois statutes dealing with "second stage" postconviction petitions. Once a PC petition has reached second stage—and McBride indicated that Walker's had—a circuit court judge cannot summarily dismiss it. If the defendant is indigent and has requested counsel, the judge has no choice but to appoint one.

Most Burge torture cases have been unsuccessful on appeal. Walker's was one of the few to return to the trial court for further proceedings, and since his 1994 trial much has been learned about Burge's operation. We now know that torture migrated from Area Two to Area Three along with Burge and we know that Detective McWeeny seemed to play "good cop" in several cases, taking confessions from suspects allegedly tortured by other detectives.

At a second stage hearing on Walker's petition, new evidence of .buse might have been introduced, detectives might have been questioned, and Judge Ford might have found himself again testifying under oath. Steven Becker observes that Shultz's ruling to dismiss the petition prevents any of that from happening. Becker and his colleague Michael Polletier filed a motion asking Shultz to vacate his order, but Shultz refused to. Becker says they'll appeal. Shultz didn't respond to calls for comment.

Responding to the 17 defense lawyers who'd asked for the disqualification of the Cook County judiciary in torture cases, chief criminal court judge Paul Biebel wrote that he agreed "public confidence in the judiciary is of significant importance." But in his April 2003 ruling he concluded that moving those cases out of the county was the wrong answer. "The best remedy for any perceived lack of faith," he said, "is to allow the judges of this jurisdiction to preside over these matters with diligence and impartiality, as they have sworn to do."

Biebel refused to believe the judges could be as partial and self-serving as the lawyers' petition made them out to be. "The removal of Petitioners' cases from Cook County would, in essence, be an acknowledgement that the judges therein are incapable of fulfilling their duty," he wrote. "This court declines to draw such a conclusion." ◫

*John Conroy can be reached at jcc. . oy329@aol.com*

*Art accompanying story in printed newspaper (not available in this archive)*: on the cover: Brian Gubicza (judges), Andrea Bauer (cake), Mary Ann Alexander (bracelet).

More Feature »

Tags: Feature, Cook County criminal justice system, Commander Jon Burge, police torture, police brutality, wrongful convictions, Jon Burge, John Conroy, Judge Paul Biebel, CPD, Chicago Police Department, Area Two, Area Three, Chicago state's attorney's office, Edward Egan, Robert Boyle, Judge Earl Strayhorn, perjury, Office of Professional Standards, Keith Walker, murder conviction, Goldblum Report, Detective Daniel McWeeny, pattern of abuse, Steven Becker, appellate defender's office, Judge Margaret Stanton McBride, Shawn Wicks, Derrick King, Detective Robert Boyle, Governor George Ryan, death penalty, death penalty moratorium, death sentence, Judge Frank Gambala, Lonza Holmes



## RELATED STORIES

**That time a Cook County judge ruled on the case of a man he himself put in prison when he was still a prosecutor**
In 2006 John Conroy reported an incredible story about how the Jon Burge torture scandal continues to reverberate in the judiciary

by Maya Dukmasova

**Hundreds of Illinois prisoners languish behind bars waiting for Dorothy Brown to do her job**
The court clerk lost the records of James Allen, who's fighting to overturn convictions that put him in prison 30 years ago. His case is not unique.

by Maya Dukmasova

**John Conroy's drama about police torture gets published not a moment too soon**
*My Kind of Town* dramatizes the former *Reader* reporter's writing on police brutality.

by Michael Miner

**Police Torture in Chicago**
An archive of articles by John Conroy on police torture, Jon Burge, and related issues

by John Conroy

## MORE BY JOHN CONROY

**The Police Torture Scandal: A Who's Who**
1. The Ringleader: Jon Burge

by John Conroy

**Police Torture in Chicago**
An archive of articles by John Conroy on police torture, Jon Burge, and related issues

by John Conroy

**The Persistence of Andrew Wilson**
A cop killer who fought to expose torture in the Chicago Police Department has died, but his testimony from beyond the grave could

still help bring down its , etrators.

by John Conroy

MORE »

## Related User Lists

Police Torture
by davic917

Chicago Police Torture
by Paul Davis

# The Chicago Council of Lawyers Evaluation Report:

## Judges Seeking Retention in the November 2016 General Election and

## Judicial Candidates Seeking to Fill Judicial Vacancies

September 15, 2016

The Chicago Council of Lawyers, in this report, releases its evaluation of the judges seeking retention in the November 4th general election. We also include in this report our evaluation of the candidates who won their primary election held in March 2014 and who are on the November ballot.

**EVALUATION METHODOLOGY FOR RETENTION CANDIDATES**

The criteria for the Council's evaluations are whether the retention candidate has demonstrated the ability to serve on the relevant court in the following categories:

- fairness, including sensitivity to diversity and bias
- legal knowledge and skills (competence)
- integrity
- experience
- diligence
- impartiality
- judicial temperament
- respect for the rule of law
- independence from political and institutional influences
- professional conduct
- character
- community service

If a candidate has demonstrated the ability to perform the work required of a judge in all of these areas, the Council assigns a rating of "qualified." If a candidate has demonstrated excellence in most of these areas, the Council assigns a rating of "well qualified." If a candidate has demonstrated excellence in all of these areas, the Council assigns a rating of "highly qualified." If a candidate has not

demonstrated that he or she meets all of the criteria evaluated by the Council, the Council assigns a rating of "not qualified."

As part of the evaluation process, we require candidates to provide us with detailed information about their backgrounds, including any complaints filed against them with the Attorney Registration and Disciplinary Commission ("ARDC") or the Judicial Inquiry Board ("JIB").

In conducting these evaluations, the Council has participated in a joint investigation and interview process with the Alliance of Bar Associations for Judicial Screening ("Alliance"). The Alliance includes the following bar associations: Asian American Bar Association, Black Women Lawyers Association, Chicago Council of Lawyers, Cook County Bar Association, Decalogue Society of Lawyers, Hellenic Bar Association, Hispanic Lawyers' Association of Illinois, Illinois State Bar Association, Lesbian and Gay Bar Association of Chicago, Puerto Rican Bar Association, and the Women's Bar Association of Illinois.

The Council, in addition to participating in the evaluation process with the Alliance, also utilized the research conducted by the Judicial Performance Commission of Cook County (JPC). The JPC does not evaluate judges for the purpose of voter education. Rather, the JPC is a group of lawyers and non-lawyers who utilize electronic surveys and phone interviews with lawyers who have filed appearance forms in the courtrooms of those judges being evaluated within the past three years. There are additional interviews with judges, litigants, and others with professional experience with the judges seeking retention. The JPC utilizes its research results to prepare a research summary for each judge, containing strengths and weaknesses of the judge, and if appropriate a judicial performance improvement plan consisting of such suggestions as peer mentoring, court watching, and continuing education. The JPC reports are shared with the judges being evaluated, their presiding judges, and with the Chief Judge of the Circuit Court. The JPC will oversee a court watching program for these judges and will re-evaluate the judges within three years. The JPC shares its research results and findings with bar groups and others doing evaluations for the retention elections.

The Council's evaluation process includes:

(1) a review of a written informational questionnaire provided to the Alliance by the candidate, including details of the candidate's career and professional development and information on any complaints filed against the candidate with the JIB or the ARDC;

(2) a review of the candidate's written responses to the supplemental essay questionnaire;

(3) interviews of judges, attorneys, and others with personal knowledge about the candidate, including those who have and those who have not been referred to the Alliance by the candidate, and not restricted to Council members;

(4) a review of the candidate's professional written work, where available;

(5) an interview of the candidate done jointly with the Alliance;

(6) review of any information concerning the candidate provided by the ARDC or the JIB;

(7) a review of any other information available from public records, such as the Board of Election Commissioners and prosecutorial agencies; and

(8) an evaluation of all the above materials by the Council's Judicial Evaluation Committee;

(9) submission of the proposed evaluation and write-up to the candidate prior to its public release, to provide an opportunity for comment, correction, or reconsideration.

The Council places special importance on interviews with attorneys who practice before the judge, particularly those who were not referred to the Council by the candidate. Most evaluations are based on information gathered and interviews held during the past few months.

In evaluating candidates, the Council expresses written reasons for its conclusions. Without knowing the reason for a recommendation concerning a candidate, the public cannot use the bar's evaluations intelligently to draw its own conclusions.

## THE IMPORTANCE OF THE RETENTION ELECTIONS

The retention elections provide the voter with an opportunity to remove those judges whose judicial performance has been, in some respect, unsatisfactory. Retention elections provide the only practical opportunity for the voters as a whole to focus on the performance of judges, with a realistic opportunity to defeat those candidates who deserve to be defeated.

## EVALUATION METHODOLOGY FOR JUDICIAL CANDIDATES IN CONTESTED ELECTIONS

Judicial candidates seeking election must run for specific vacancies. Candidates seeking election to the Circuit Court – which is the County's trial-level court for both civil and criminal matters – may run in either a countywide or a subcircuit race. Legislation creating the subcircuits provides that approximately one-third of the judges are elected by voters of the entire County, and each of the remaining judges elected by voters runs in one of fifteen geographical districts into which the County has been arbitrarily divided. Once elected, there is no distinction between a "countywide" judge and a "subcircuit" judge. Either kind can be assigned to any judicial post in the County.

The Council rates candidates as *"highly qualified,"* *"well qualified,"* *"qualified,"* or *"not qualified."* If a candidate refuses to submit his or her credentials to the Council, that candidate is rated *"not recommended"* unless the Council is aware of credible information that would justify a "not qualified" rating. Because we believe a willingness to participate in bar association and other public evaluations is a key indicator of fitness for public office, no candidate who refuses to be screened can be found "qualified."

We apply higher standards to candidates for the Supreme Court and the Appellate Court. Because these Courts establish legal precedents that bind the lower courts, their work has a broad impact on the justice system. Moreover, qualities of scholarship and writing ability are more important to the work of the Supreme and Appellate Court justices than they are to satisfactory performance as a trial judge.

The Council does *not* evaluate candidates based on their substantive views of political or social issues. Nor do we take into account the particular race in which a candidate is running or the candidates against whom a candidate is running. We apply a uniform standard for all countywide and subcircuit

elections because judges elected through either method can be assigned to any judicial position in the Circuit Court.

It should be noted that a lawyer might be performing well or even very well without being qualified to be a judge. A good lawyer may be unqualified to be a judge, for instance, because of a narrow range of prior experience, limited trial experience, or limited work doing legal research and writing. A lawyer may have the temperament and intelligence to be a judge without yet having worked in a position that would allow the candidate to demonstrate that capacity. Accordingly, it should be recognized and expected that we will rate some good lawyers "not qualified."

## Judges Seeking Retention in the November 2016

## General Election

### Hon. Robert Balanoff -- Qualified

Judge Robert Balanoff was elected to the Circuit Court in 2004. He presently serves in the Child Protection Division of the Circuit Court, where he adjudicates claims of abuse and neglect of minor children. Prior to his election, Judge Balanoff in private practice.

Judge Balanoff is praised for his knowledge and his ability to handle complex matters. He is reported to have a good temperament. He treats the parties before him with respect and compassion. Respondents further characterized Judge Balanoff as both very efficient and quite diligent. The Council finds him Qualified for retention.

### Hon. Steven James Bernstein -- Qualified

Judge Bernstein was elected to the bench in 2010. Before taking the bench he was in private practice and served as the Acting General Counsel for the Illinois Criminal Justice Authority where he drafted inter-agency agreements, drafts legislation, and prepares and delivers training programs. Upon becoming a judge, he heard traffic, state conservation cases, misdemeanor criminal cases, DUI cases and drug related cases. In 2014, he was moved to the Juvenile Justice Delinquency Division with the Second and Third municipal districts.

Judge Bernstein is well respected for his knowledge and diligence. He is praised for his rapport with juries and for showing respect of all persons appearing before him. He is also praised for his courtroom management. He is reported to be handling well his job as a "swing judge" through which he must substitute for another judge – taking cases to trial if the parties are ready. The Council finds him Qualified for retention in his present position.

### Hon. Robert W. Bertucci -- Qualified

Judge Bertucci was elected to the bench in 1992. In 1983, Judge Bertucci began work as an Assistant State's Attorney with the Cook County State's Attorney's Office. He was also in private practice. He was assigned to the County Division in 2001 where he has remained.

Judge Bertucci is reported to be exceptionally knowledgeable about the issues coming before him, and he is praised for his courtroom management. In his mental health commitment call, he is considered to be fair, sensitive, prepared, and decisive. He is reported to be well-prepared and hard-working. The Council finds him Qualified for retention.

**Hon. Kathleen Marie Burke -- Qualified**

Judge Burke began legal work at Johnson & Bell in 1989 and moved to work with the Cook County State's Attorney's Office in 1993. She was elected to the bench in 2004. She currently is assigned to the Fifth Municipal District, Judge Burke has served as a part-time Adjunct Professor at Loyola University Chicago School of Law since 2000.

Judge Burke is considered to be knowledgeable about the issues before her and she is praised as being fair and respectful to the parties before her. She is reported to be well prepared and to have an excellent demeanor. Some lawyers complain about the relatively slow pace of her call, but lawyers generally think she is doing a good job. The Council finds her Qualified for retention.

**Hon. Charles Patrick Burns -- Well Qualified**

Judge Burns was elected to the bench in 1998. He was an Assistant Cook County State's Attorney before taking the bench. As of May 2007, Judge Burns has presided over a felony trial call as well as the R.A.P. Drug Court since July 2010.

Judge Burns has taught Graduate and Undergraduate classes at Lewis University on Justice, Law, and Public Safety studies, and has authored a number of published works, including as a Topic Writer with the Illinois Judicial Benchbook, as well as articles in the Illinois Bar Journal, the Duke University Journal of Law and Technology, and the Loyola University Chicago Law Journal.

Judge Burns is praised widely for his excellent grasp and application of the law. He is reported to handle both his regular felony call and the R.A.P. call with efficiency and he is praised for his devotion to the lives and rehabilitation of the defendants who come before him. The success of the RAP program is said by many to be the result of Judge Burns' initiative and dedication. He has numerous published works dealing with his judicial role and he is praised for his work ethic as well as his courtroom management. The Council finds him Well Qualified for retention.

**Hon. Jeanne R. Cleveland Bernstein -- Qualified**

From 1971 until 1976, Judge Bernstein served as a General Attorney for the Office of Regional Counsel, before going on to work as an independent general practitioner. She was elected to the bench in 2004. She currently is assigned to the Domestic Relations Division.

Judge Cleveland Bernstein is reported to be knowledgeable and diligent as a judge in the Domestic Relations Division. She is praised for being well-prepared and for the accuracy and decisiveness of her rulings. There were respondents who complained that she can be intemperate on the bench. Some of these respondents noted that

these incidents are sometimes part of a case where the lawyer has, in her opinion, needlessly delayed a case or filed a frivolous motion. Other respondents complained that she can be unduly quick to make up her mind about a particular issue. On balance, the Council finds her Qualified for retention.

**Hon. John Patrick Callahan, Jr. -- Qualified**

Judge Callahan began his work as a tax consultant for the Price Waterhouse & Company before he became an Assistant Cook County State's Attorney in 1989. He also was in private practice before being appointed to the bench by the Illinois Supreme Court in 2009. He was elected to the bench in 2010. He currently is assigned to the Law Division Motion Call handling pretrial motions. Judge Callahan works as a lecturer at DePaul College of Law for the course Trial Advocacy I.

Judge Callahan is praised for his grasp of the law and for being well-prepared. He is reported to be able to handle even complex cases and many attribute his substantial litigation experience as a lawyer for his ability to handle litigation efficiently and effectively as a judge. He is reported to show respect to all parties before him, and is praised for the patience and understanding he shows pro se litigants. The Council finds him Qualified for retention.

**Hon. Bonita Coleman – Not Qualified**

Judge Coleman was elected to the bench in 2010. She was in private practice before becoming a judge. She is currently assigned to the Domestic Relations Division in Markham.

Judge Coleman is reported to be professional and courteous on the bench. The Council is concerned that many lawyers question Judge Coleman's knowledge of the law, although most respondents note that she does the necessary research to rule. There was a mixed response as to whether she is fair to both men and women who appear before her. Some believe she favors male parties, but others say she is fair and seeks a just outcome. The Council must balance the totality of the positive and negative comments we heard about Judge Coleman's judicial performance. On balance, the Council finds her Not Qualified for retention.

**Hon. Ann Finley Collins -- Qualified**

Judge Collins served the Cook County Public Defender's Office from November 1985 until 2010 as an Assistant Public Defender, and from 1997 until 2010 on the Homicide Task Force for that Office. She was elected to the bench in 2010. She is currently assigned to the Fourth Municipal District.

Judge Collins has been hearing misdemeanor cases for most of her judicial career, although she currently hears felony matters, as well. Prosecutors in particular cases claim she favors the defense, but most respondents praise her for being fair and exceptionally patient and respectful of all parties before her. She is well versed in the law and is considered to be very knowledgeable. She is praised as a diligent jurist who does the right thing. The Council finds her Qualified for retention.

**Judge Joy Cunningham – Well Qualified**

Judge Joy V. Cunningham was elected to the Illinois Appellate Court in 2006. She was elected as an Associate Judge in 1997 and served for three years before leaving the bench. From 2000 to 2006 she was Senior Vice President, General Counsel, and Corporate Secretary at Northwestern Memorial Healthcare. She served as Associate General Counsel for Loyola University from 1986 to 1996. Her legal career also included private practice and she served as a judicial law clerk to Glen Johnson of the Illinois Appellate Court. She is a past president of the Chicago Bar Association. She was a guest lecturer at Loyola University School of Law in 2008 and 2009. She does a considerable amount of teaching which requires extensive preparation of written materials which she provides to others in the judiciary in the context of seminars, conferences or reference materials. She has won numerous awards from 2005 to 2011.

Judge Cunningham was praised as a good practitioner and as a solid, hard-working jurist with good legal ability and temperament. As a trial judge she heard both civil and criminal law matters. As an Appellate Court Judge, she continues to be praised for her work ethic and temperament. She reportedly asks good questions during oral argument and writes well-reasoned opinions. The Council in 2006 found her Well Qualified for the Appellate Court, finds her Well Qualified for the Illinois Supreme Court, and finds her Well Qualified for retention.

**Hon. Paula Marie Daleo – Well Qualified**

Judge Daleo was elected to the Circuit Court in 2004 and presently serves in the Fourth Municipal District of the Circuit Court. Previously, she served in the First Municipal District. She was admitted to practice in 1978. Prior to her election to the bench, Judge Daleo was an Executive Assistant State's Attorney and formerly Chief of the Special Prosecutions Bureau, as well as an Assistant Cook County State's Attorney. She also has experience as a general practitioner.

Judge Daleo came to the bench after having extensive trial experience in complex matters. As a judge, she is widely praised for her legal knowledge and often supports her rulings with explanations. She is reported to be fair to all parties before her and that she applies the law correctly and evenly. She is reported to be especially hard-working and conscientious. She is reported to have an excellent temperament and is praised for her courtroom management skills. The Council finds her Well Qualified for retention.

**Hon. Deborah Mary Dooling -- Qualified**

Judge Dooling was elected to the bench in 1992. She is currently assigned to the Law Division. Previously, she served in the Criminal Division and the Chancery Division.

Prior to her assignment on the bench, Judge Dooling worked as a staff attorney for the Florsheim Shoe Company from 1978 to 1980. She became an Assistant Cook County State's Attorney from 1980 through 1992.Judge Dooling is an adjunct professor at the John Marshall Law School for Trial Advocacy I and II.

Judge Dooling is considered to be a very good judge with good ability and temperament. She has done well in both civil and criminal assignments. She is praised for her ability to do well in a variety of assignments, and she is considered to have good courtroom management skills. The Council finds her Qualified for retention.

**Hon. Lawrence J. Dunford -- Qualified**

Judge Dunford was elected to the bench in 2004. He was in private practice before taking the bench. He is assigned to the Sixth Municipal District and the Domestic Violence Division in the Sixth Municipal District in a dual capacity.

Judge Dunford is considered to have a good knowledge of the law and he is praised for his courtroom management. In 2010, the Council questioned Judge Dunford's temperament, but he has since changed judicial assignments. Respondents in the current evaluation spoke favorably about his temperament and demeanor. The Council finds him Qualified for retention.

**Hon. Timothy C. Evans – Highly Qualified**

Judge Evans was elected to the bench in 1992. He is the Chief Judge of the Circuit Court of Cook County and has served as the Presiding Judge of the Domestic Relations Division. He was first elected to the position of Chief Judge in 2001. Before taking the bench, he was a sole practitioner. Judge Evans was also an assistant corporation counsel for the City of Chicago and had served as a floor leader for Mayor Harold Washington and as an Alderman for the 4th Ward.

As Chief Judge, he does not hear cases, but sees to the administration of the courts. Chief Judge Evans created a domestic violence division for the Cook County Circuit Court, re-instituted a pre-trial services program and changed procedure so that bond hearings are conducted in person, rather than via teleconferencing. He is responsive to public concerns about the judiciary and works to institute diversion and deferral treatment programs in the criminal courts to reduce cost and waste and better serve the interests of the community.

In 2009, he received the William H. Rehnquist Award for Judicial Excellence, presented by the National Center for State Courts. The award recognizes a state judge who "exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics." He pushed for the establishment of the Domestic Violence Courthouse that opened in 2005. He is also credited for pushing forward the Court's mortgage foreclosure program. He has been praised for increasing the diversity of the Presiding Judges among the numerous divisions of the Circuit Court. In 2013, he issued a general administrative order outlawing the practice of some preliminary hearing judges of denying a Public Defender to defendants without conducting an indigence hearing. He is currently promoting the development of a community court in the North Lawndale area of Chicago.

Chief Judge Evans has his critics. Some respondents say he is too often slow to respond to the need for major systemic changes. But he has his strong supporters, as well, and the Council notes his many accomplishments. We know that the Circuit

Court needs consistent, enlightened leadership, and the Court must collaborate with all of the major stakeholder governmental agencies to bring about necessary systemic reform. We encourage Chief Judge Evans to meet this challenge. The Council finds him Highly Qualified for retention.

**Hon. Denise Kathleen Filan -- Qualified**

Judge Filan was elected to the bench in 1998. Before becoming a judge, she practiced with Odelson & Sterk Ltd. Judge Filan currently serves in a Traffic courtroom hearing a number of municipal traffic violations. She is currently assigned to the Bridgeview Courthouse.

Judge Filan is considered to be a good jurist with good legal ability and temperament. She is praised for treating all litigants with respect and for her courtroom management skills. The Council finds her Qualified for retention.

**Hon. Nicholas R. Ford – Not Qualified**

Judge Ford was appointed to the bench in December 1997, and was elected in 1998. Since 2002, he has been assigned to the Criminal Division of the Circuit Court. Judge Ford was admitted to practice in 1988. He was an Assistant Cook County State's Attorney throughout his career as an attorney.

Judge Ford is considered to have good legal ability and he is regarded as hard-working. In 2010 his demeanor drew some criticism for impatience and inappropriate remarks, but respondents in the current evaluation praise his temperament as being both patient and in control of the courtroom.

But two decisions handed down by the Illinois Appellate Court since 2010 raise serious concerns about Judge Ford's ability to decide cases in an impartial manner. In *People v. Jackson*, the Appellate Court reversed and remanded a first degree murder conviction rendered by Judge Ford at a bench trial, holding he "abandoned [his] role as a neutral and impartial arbiter of fact by adopting a prosecutorial role when questioning [the] defendant's expert witness and by relying on matters based on prior private knowledge" that were outside the record, thereby undermining the defendant's right to a fair trial. And in *People v. Pace*, another first degree murder case, the Appellate Court vacated an aggregate 100 year sentence imposed by Judge Ford upon a 16-year-old defendant, finding that Ford considered and "placed significant emphasis" on impermissible factors during sentencing, including the defendant's choice to remain silent during the sentencing hearing, Judge Ford's personal views, and evidence not located in the record. "It is noteworthy," continued the Appellate Court, "that the portion of the record in which [Judge Ford] announced [his] sentence goes on for 16 pages. At least four of those pages were devoted solely to [Judge Ford] discussing [his] personal feelings about gang violence; other large portions see the judge discussing the victims and stating that he was aligned with them." In both *Jackson* and *Pace*, the Appellate Court remanded the matters to the Circuit Court with instructions to reassign the cases to a different judge.

Judicial impartiality is a foundational component of our legal system. Deviation from this principle not only deprives litigants of due process, but also undermines public confidence in the courts. On balance, the Council finds Judge Ford Not Qualified for retention

**Hon. Daniel James Gallagher – Qualified**

Judge Gallagher was elected to the bench in 2010. Prior to his appointment, he was in private practice and served as an Assistant Cook County Public Defender. Judge Gallagher is presently assigned to the Misdemeanor Room at Branch 34, presiding over various misdemeanor cases.

Judge Gallagher is considered to have good adequate legal ability and is praised for his willingness to mentor young lawyers. But some respondents noted that he demonstrates a short temper on the bench. Yet Judge Gallagher has acknowledged that temperament can be a problem for him, and is taking steps to remedy the problem. Judge Gallagher has been praised for seeking to find pragmatic solutions for offenders on his call. On balance, the Council finds him Qualified for retention.

**Hon. Vincent Michael Gaughan – Well Qualified**

Judge Vincent Gaughan was appointed to the bench by the Illinois Supreme Court in 1991 and was elected in 1994. He presently serves in the Criminal Division of the Circuit Court. Prior to his appointment to the bench, Judge Gaughan was a supervising Assistant Cook County Public Defender.

Judge Gaughn is widely praised for his legal ability and for being adept at handling some of the most complex cases in the criminal division. He is reported to have very good courtroom management skills. Many respondents say that he can be short tempered on the bench, but even those who complain about his temperament report that he is a very good trial judge. The Council finds him Well Qualified for retention.

**Hon. John C. Griffin – Well Qualified**

Judge Griffin was elected to the bench in 2010. He was in private practice before becoming a judge. He currently presides over a commercial calendar in the Law Division and also serves as Supervising Judge for the Commercial Section of the Law Division.

Judge Griffin is widely praised for his legal ability and for being exceptionally hard working. He completes his cases but is reported to be very good at listening to all the parties. He has received equally high praise in a variety of assignments . He possesses a very good temperament. The Council finds him Well Qualified for retention.

**Hon. Sophia Harriet Hall -- Qualified**

Judge Hall was elected to the bench in 1980. She is assigned to the Chancery Division, as well as remaining the Administrative Presiding Judge of the Resource Section of the Juvenile Justice and Child Protection Department. Judge Hall has taught and lectured at a large number of schools and conferences in the past six

years, including Loyal University Chicago School of Law, DePaul School of Law, and the Illinois Administrative Law Conference.

Judge Hall is considered to have good legal ability with good courtroom management skills. She has spent her career being a respected jurist on the bench, while working for a fairer and more effective judicial system for all persons. The Council finds her Qualified for retention.

**Hon. Kay Marie Hanlon -- Qualified**

Judge Kay Marie Hanlon was elected to the Circuit Court in 2004. She is currently assigned to a felony trial courtroom in the Third Municipal District. Judge Hanlon was admitted to practice in 1985. Prior to election, she was in private practice focusing on criminal defense and family law. From 1985 to 1987, she served as an Assistant Cook County State's Attorney where she did both trial and appellate work. She teaches on-line classes. Judge Hanlon is praised for her legal knowledge and ability. She is reported to be exceptionally hard-working with a good temperament. She is also praised for her courtroom management skills and for the quality of her written opinions. The Council finds her Qualified for the Appellate Court and for retention to the Circuit Court.

**Hon. Edward Harmening -- Qualified**

Judge Harmening was appointed to the bench by the Illinois Supreme Court in 2009 and elected to the bench in 2010. He began his legal career working as Assistant State's Attorney in 1994 with the Cook County State's Attorney's Office, Criminal Division, where he prosecuted misdemeanor cases. From there, he moved into private practice in 1997, with Clausen Miller; primarily handling insurance defense cases. In 2000, he became Senior Associate at what is now Nielsen Zehe & Antas, where he once again litigated primarily matters of insurance defense. In 2003, he returned to the Assistant State's Attorney office, where he became Deputy Supervisor in 2006. Since August of 2014, he has presided over jury trials and conducted settlement conferences in the Law Division.

Judge Harmening is praised for his knowledge and ability. He is well – prepared and is praised for his willingness to let lawyers and pro se individuals have their day in court, while maintaining good courtroom management. He is respectful of all parties. The Council finds him Qualified for retention.

**Hon. William H. Hooks – Qualified**

Judge Hooks received his law degree from ITT Chicago-Kent in 1981 and was admitted to the Illinois bar in that year. He was appointed to the Circuit Court of Cook County in 2008. As a Judge Advocate in the U.S. Marine Corps and Reserves, he prosecuted and defended criminal cases. He left active duty in 1985 (though remained in the Reserves for an additional 10 years) and until 1991 practiced civil litigation (mainly insurance defense) with Pretzel & Stouffer, Hinshaw & Culbertson, and Garland W. Watt and Associates. Between 1995 and 2008, he has practiced on his own and in partnership with others, concentrating on criminal defense and a wide range of civil

litigation. As a lawyer, he has extensive jury and bench trial experience in both federal and state courts, and served as a hearing officer and hearing board chair for the ARDC. As a trial judge, he is considered to have good legal ability, and to be hard-working and well-prepared. He is praised for preparing numerous written orders and opinions for the cases before him.

Judge Hooks is dedicated to the improvement of the court system. As an example, he has since 2010 served as a Commissioner of the Illinois Courts Commission by appointment of the Illinois Supreme Court, and also serves on the Cook County Justice Advisory Council. He lectures frequently in continuing legal education and public information seminars that focus on the administration of justice and ethics. He has published practice-related articles. His professional conduct and personal integrity are above reproach. The Chicago Council of Lawyers finds Judge Hooks Qualified for the Appellate Court and for retention to the Circuit Court.

**Hon. Arnette R. Hubbard – Qualified**

Judge Arnette Hubbard was appointed to the bench in 1997 and elected in 1998. She is currently assigned to the Law Division. Prior to becoming a judge, she was in private practice.

Judge Hubbard is considered to be a smart and knowledgeable judge who is decisive. She is praised for her even keel temperament, and for showing respect for all parties before her while maintaining control of her courtroom. The Council finds her Qualified for retention.

**Hon. Cheryl D. Ingram -- Qualified**

Judge Ingam was elected to the bench in 1992. Prior to her assignment to the bench, Judge Ingram served in the Cook County Public Defender's Office. In 1994 she was assigned to the Fourth Municipal District and became the Presiding Judge in 2010.

Judge Ingram is praised both as a jurist and in her administrative role as a Presiding Judge. She is considered to have good legal ability and a very good temperament, being respectful of all parties before her. She is reported to be well-prepared. Commenting on her ability as Presiding Judge, Respondents find that the courthouse in the 4th District "runs smoothly." The Council finds her Qualified for retention.

**Hon. Raymond L. Jagielski -- Qualified**

Judge Jagielski was elected to the bench in 1992. He is currently the Presiding Judge of the Fifth Municipal District. Before becoming a judge he served as an Assistant Cook County Public Defender and was in private practice.

Judge Jagielski is considered to have good legal ability with good courtroom management skills. He is praised for his ability to handle a heavy call, and for being hard-working. He is also noted for his fairness. Practitioners in the Fifth Municipal District praise his management skills as the Presiding Judge. The Council finds him Qualified for retention.

**Hon. Sharon O. Johnson – Qualified**

Judge Johnson was elected to the bench in 2010. She was in private practice before taking the bench. She sits in the Domestic Relations Division in Markham.

Judge Johnson is considered to have good legal ability. Some respondents say she has been short tempered on the bench in the past, but that she has demonstrated a good judicial temperament in her current assignment. She receives higher marks as a judge in her current assignment than in past assignments – such as better temperament and improved court management skills. The Council finds her Qualified for retention.

**Hon. Linzey D. Jones -- Qualified**

Judge Jones was elected to the bench in 2010. Prior to taking the bench, he served as an associate at Sidley Austin from 1982 until 1990, at which time she became a partner. He remained a partner at Sidley Austin until 2003, at which time he became a partner at Pugh, Jones, and Johnson, where he served until 2010. Judge Jones is assigned to the Fifth Municipal District where he presides over bench and jury misdemeanor cases.

Judge Jones is a respected jurist with good legal ability. He is reported to have good legal ability and to be fair to all sides. He is reported to be well-prepared and to have good courtroom management skills. The Council finds him Qualified for retention.

**Hon. Thomas Joseph Kelley -- Qualified**

Judge Kelley was elected to the bench in 2004. Prior to becoming a judge, he served at Kelley & Greco first as an Associate and then a Partner between 1984 and 2004. He currently sits in the Domestic Relations Division.

Judge Kelley is considered to be a good jurist with good legal ability and temperament. His decisions are considered to be well reasoned. The Council finds him Qualified for retention.

**Hon. John Patrick Kirby – Well Qualified**

Judge Kirby was elected to the bench in 1998. He was an Assistant Cook County State's Attorney before becoming a judge. He has served in the Criminal Division and is now sitting in the Law Division. Judge Kirby is a lecturer at DePaul University in Trial Advocacy I as well as a substitute lecturer in other courses. He also lectures high school and college classes that observe court procedures in the Daley Center.

Judge Kirby is considered to be knowledgeable in a variety of areas of law with considerable judicial experience in both civil and criminal law matters. He is reported to have very good temperament and enjoys a reputation of being fair to all sides. He is praised for being well-prepared. In the criminal division, he received praise for his dedication to using alternative sentencing in cases where the defendants are non-violent. He was personally involved in developing a cyber high school as an alternative sentence for youthful offenders. Upon the awarding of a high school diploma, Judge Kirby entered a motion to vacate the judgment. He implemented a special program for defendants who are veterans, and he has personally sought to find alternative

treatment programs to become part of his sentencing. He earns high respect as a jurist in both civil and criminal divisions. The Council finds him Well Qualified for retention.

**Hon. Geary Wayne Kull – Well Qualified**

Judge Kull was appointed to the bench by the Illinois Supreme Court in 2009 and was elected in 2010. Before becoming a judge he served as an Assistant Cook County Public Defender and was in private practice doing criminal defense work. He is assigned to the Fourth Municipal District hearing felony cases.

Judge Kull is widely praised for his knowledge of the law and for his courtroom management skills. He is described as being courteous and professional, although he presides over a heavy court call. He is praised for being well-prepared and he is reported to issue well-reasoned decisions in a timely fashion. The Council finds him Well Qualified for retention.

**Hon. Bertina Lampkin – Well Qualified**

Hon. Bertina Lampkin was admitted to practice in 1974 and was elected to the Circuit Court in 1992. As a lawyer, she had extensive litigation experience in both complex trial and appellate court matters as an Assistant Cook County State's Attorney. She also has experience trying civil cases as an attorney with the Chicago Department of Law. Justice Lampkin was appointed to the Illinois Appellate Court in 2009.

As a trial judge, she heard criminal law matters at the Courthouse at 26th and California, and at that time was reported to be a very good, hardworking jurist who was praised for her writing skills. When the Council found her qualified for the Appellate Court in 2009, her written evaluation materials included approximately 100 opinions from cases she heard at 26th street, including findings on post-conviction petitions and motions to quash and suppress. She has served as the chair of the Supreme Court criminal pattern jury instructions committee. In that position, she was responsible for writing the new death penalty instructions and the instructions for specific specialized jury verdict required by the *Apprendi* case. She has taught in the area of death penalty litigation.

As an Appellate Court judge, Justice Lampkin has demonstrated that she meets – and exceeds the higher standards that the Council uses in evaluating candidates for the Appellate Court. In the 2013 judicial evaluation, lawyers report that Justice Lampkin has exceptional command of substantive law, as well as procedural rules. She is praised for being hardworking and her written opinions are considered to be well-reasoned. She is an active participant in oral arguments and is reported to have good temperament. The Council finds Judge Lampkin Well Qualified for the Appellate Court and Well Qualified for retention to the Circuit Court.

**Hon. Diane Joan Larsen -- Qualified**

Judge Larsen was elected to the Circuit Court in 1998 and presently serves in the Chancery Division. She was admitted to practice in 1983. Prior to her election, Judge Larsen was an Assistant Corporation Counsel for the City of Chicago. Judge Larsen is the author and editor of the Civil Motion

Practice Manual, published by the Administrative Office of the Illinois Courts. She has taught at Loyola University Chicago School of Law since 1991 as Adjunct Professor.

Judge Larsen is widely praised for having good legal ability and for being well prepared. She is considered to have a low key temperament but maintains control of her court call. The Council finds her Qualified for retention.

**Hon. Daniel Joseph Lynch – Not Qualified**

Judge Lynch was elected to the bench in 1998. He is presently assigned to the Law Division. He is a former Assistant Cook County State's Attorney.

Judge Lynch is widely respected for his knowledge of the law and procedure. He is considered to be well prepared and is reported to be adept at handling long, complex trials. Some respondents complained that he can, on occasion, be short tempered on the bench. Most say that he has a good temperament. The Council is concerned, however, that Judge Lynch on several occasions has reached beyond his immediate role as judge in a particular matter to engage in legal acts that seem to be outside his normal course of deciding a case before him. These matters include seeking or having sought to have the attorneys prosecuted for fraud or obstruction. In another matter, the judge unsuccessfully sought to have the Cook County State's Attorney prosecute one of the parties before him. These unorthodox uses of judicial discretion, including criminal contempt charges, are troubling to the Council. On balance, the Council finds Judge Lynch to be Not Qualified for retention.

**Hon. Thomas V. Lyons – Well Qualified**

Judge Lyons was appointed to the bench in 2008 and was elected in 2010. He had served as an Assistant Cook County State's Attorney. He is currently assigned to the Law Division where he presides over jury trials.

Attorneys praise Judge Lyons' legal ability and his temperament. They describe him as having a good grasp on even complex issues and he is said to treat all parties with respect. He shows patience on the bench but maintains control of the courtroom. Lawyers report that he reads all relevant materials and demonstrates the ability to communicate effectively with the jury. Lawyers often describe him as an excellent judge. The Council finds him Well Qualified for retention.

**Hon. Terrence Fulton MacCarthy – Qualified**

Judge MacCarthy was elected to the bench in 2010. He had served as an Assistant Public Defender for Cook County. He is currently sitting in the Fourth Municipal District , where he has been handling domestic misdemeanor and Class 4 Felony Criminal cases. He has taught at both DePaul University's College of Law and the University of Chicago's Mandel Legal Aid Clinic, serving as an Adjunct Faculty Member for the former. MacCarthy has also co-authored a book on Impeachment, entitled "MacCarthy on Impeachment: How to Find and Use these Weapons of Mass Destruction", published spring 2016 by the American Bar Association. He has also recently authored a book titled "Improv for Lawyers", to be published at a later date.

Judge MacCarthy is considered to have good legal ability and is praised for his temperament. He is reported to be exceptionally punctual and hard working. He is praised for his well reasoned opinions and for showing respect to all parties before him. The Council finds him Qualified for retention.

**Hon. William O. Maki -- Qualified**

Judge Maki was elected to the bench in 1992 and is currently the Presiding Judge of the Third Municipal District. He also presides over the expungement call. He was previously assigned to the Chancery Division. Prior to election he was in private practice.

Judge Maki is considered to have good legal ability and temperament. He is praised for showing respect to all parties and is reported to have good courtroom management skills. As a presiding judge, practitioners report that the courthouse is well run. The Council finds him Qualified for retention.

**Hon. Daniel Brian Malone -- Qualified**

Judge Malone was appointed to the bench by the Illinois Supreme Court in 2009 and was elected in 2010. He was in private practice before becoming a judge. He was assigned in 2013 to the Probate Division, where he currently sits.

Judge Malone is considered to have good legal ability. All respondents consider him to be knowledgeable and he is praised for being a quick study when he was appointed to the Probate Division. He rules in a timely manner and he is praised for his well reasoned opinions. He is reported to have a good temperament and is fair to all parties. The Council finds him Qualified for retention.

**Hon. LeRoy Kendall Martin, Jr. -- Qualified**

Judge Martin was elected to the bench in 2002. He is currently the Presiding Judge of the Criminal Division and had served in the Chancery Division. He was in private practice before becoming a judge. Judge Martin taught trial practice at Loyola University School of Law in 2012 and again in 2014. He also lectures on the role of African American soldiers in both the Civil War and World War One and he speaks to young people about the importance of education and ways to succeed

Judge Martin is considered to have good legal ability, and he is praised for how he is grown into a very difficult job of being the Presiding Judge of the Criminal Division. He is deliberative but decisive. He has a low key temperament and he is praised as both a good judge and an effective administrator. Judge Martin is also praised for always being professional in his demeanor and fair to litigants and court personnel. The Council finds him Qualified for retention.

**Hon. James Patrick McCarthy -- Qualified**

Judge James McCarthy was appointed to the bench in 1996 and elected in 1998. He is currently assigned to the Law Division and previously served in the First Municipal District Traffic Center. Judge McCarthy was admitted to practice in 1978. Prior to appointment, he was in private practice, as well as assistant

Judge McCarthy is considered to have good legal ability. He is praised for his preparation and decisiveness. He is well prepared and his rulings are reported to be well reasoned. Judge McCarthy is considered to be professional in his demeanor and fair to all parties. The Council finds him Qualified for retention.

**Hon. Clare E. McWilliams – Qualified**

Judge Clare McWilliams was elected to the bench in 2004. She is currently assigned to the Law Division. Previously, she was assigned to the First and Second Municipal Districts. Judge McWilliams was admitted to practice in 1988. She was in private practice prior to becoming a judge.

She has taught as an adjunct professor for the John Marshall Law School on two occasions since January of 2010, once for Legal Counseling & Client Interviewing, and again for Advanced Trial Advocacy.

Judge McWilliams is widely praised for her legal ability and courtroom management skills. She is reported to produce well reasoned opinions in a timely fashion. She is described as having a professional demeanor and is adept at treating pro se litigants with respect. The Council finds her Qualified for retention.

**Hon. Mary Lane Mikva – Highly Qualified**

Judge Mary Mikva was elected to the Cook County Circuit Court in 2004. She was appointed to the Illinois Appellate Court in June 2016. She had been assigned to the Chancery Division and to the Child Protection Division. Judge Mikva was admitted to practice in 1980 and prior to her election, she was law clerk to Judge Prentice H. Marshall and later to U.S. Supreme Court Justice William J. Brennan, Jr. Judge Mikva also served as an appellate attorney for the City of Chicago Law Department, as well as in private practice.

As a trial judge, Judge Mikva is widely praised for her legal ability and courtroom management skills. She has mentored new judges and is considered to be exceptionally knowledgeable. She is described as having good interaction with all parties in the courtroom, and she is reported to be scrupulously fair to all lawyers and litigants. She enjoys an excellent reputation for her diligence, punctuality, and for always being well prepared. The Council finds her Highly Qualified for retention.

**Hon. Raymond William Mitchell – Well Qualified**

Judge Mitchell was appointed to the bench by the Illinois Supreme Court in 2008 and was elected in 2010. He presides over an Individual Commercial Calendar for the Law Division. Judge Mitchell has co-authored a Traffic Court Bench Book.

Judge Mitchell is considered to have very good legal ability. He is reported to be knowledgeable and to issue well reasoned opinions in a timely fashion. He has a professional demeanor, and is reported to be fair to all parties. He enjoys a reputation of being well prepared and holding lawyers to a high standard. The Council finds him Well Qualified for retention.

**Hon. Allen Francis Murphy – Qualified**

Judge Murphy was appointed to the bench by the Illinois Supreme Court in 2008 and was elected in 2010. He is assigned to the Sixth Municipal District.

Judge Murphy is generally praised for his legal knowledge and ability. He is praised as being well prepared and for his courtroom management. Defense counsel strongly praised Judge Murphy for being fair and for showing respect to all parties. He is considered generally to have a good temperament and is reported to be punctual. The Council finds him Qualified for retention.

**Hon. Patrick T. Murphy – Qualified**

From 1978 until December of 2004, Judge Murphy worked as Cook County Public Guardian, supervising a large staff and representing children as well as acting as guardian to disabled adults. He was elected to the bench in 2004. For the first three months on the bench, Judge Murphy worked in traffic court, and was moved in March of 2005 to the Domestic Relations Division, hearing an independent call, as well as being assigned to the Unified Family Court Project.

Judge Murphy is considered to have good legal ability. He is knowledgeable and is praised for his courtroom management. He is considered to be exceptionally hard working. The Council has noted temperament issues in its 2010 evaluation, but the current evaluation reported general praise for his temperament. The Council finds him Qualified for retention.

**Hon. Timothy Patrick Murphy -- Qualified**

Judge Timothy Murphy was elected to the Circuit Court in 2004. He is currently assigned to the Domestic Relations Division and was previously in the First Municipal District. Judge Murphy was admitted to practice in 1984. Prior to election, he was in private practice.

Judge Murphy is considered to have good legal ability. He is reported to be a very capable judge, with good temperament. He is praised for his professionalism in the courtroom and for his knowledge of the law. His rulings are described as thorough and well reasoned. The Council finds Qualified for retention.

**Hon. Kathleen Mary Pantle – Well Qualified**

Judge Pantle was elected to the bench in 1998. She is a former Cook County Public Defender. She has been assigned to the Juvenile Justice Division and the Felony Trial Division. In January 2007, she was reassigned to the Chancery Division, where she has remained since, presiding over equitable matters, contract actions, class actions, administrative review actions, property disputes, partnership disputes, and general commercial litigation. Judge Pantle coached the DePaul University College of Law Trial Team through spring 2012, and is the author of an article entitled "Defending Illinois Criminal Cases" in *Arrest, Search, and Seizure.*

Judge Pantle is widely praised as a capable judge with very good legal ability. She is praised for well reasoned opinions issued in a timely fashion, for being well prepared,

and for being knowledgeable. She is reported to be fair to all parties and has a professional demeanor. The Council finds her Well Qualified for retention.

**Hon. Daniel J. Pierce -- Qualified**

Judge Pierce was appointed to the bench by the Illinois Supreme Court in 2008 and elected in 2010. He served early in his career as an Assistant Cook County State's Attorney. In 1975, he worked for the Cook County Assessor's Office as the Chief Deputy Assessor. He became a partner at a civil and criminal litigation and real estate tax firm in 1980 before he became a solo practitioner from 1986 until 2008. He most recently was assigned to the Law Division before he was appointed to the First District Illinois Appellate Court in 2013.

As an Illinois Appellate judge, respondents say that he is well versed in the issues and is well prepared for oral argument. It is reported that his opinions are well reasoned. The Council finds him Qualified for retention.

**Hon. Sandra Gisela Ramos -- Qualified**

Judge Ramos was elected to the bench in 2010. She was admitted to practice law in Illinois in April, 1986. She began her career as an Assistant Cook County State's Attorney and then worked as a sole practitioner focusing on criminal defense cases. She has been assigned to a variety of misdemeanor courtrooms. She currently is assigned to Branch 48 where she hears felony preliminary hearings.

Judge Ramos is considered to have good legal ability, and she is reported to have a professional demeanor. She is described as being fair to all parties and is considered to be knowledgeable. The Council finds her Qualified for retention in her current assignment.

**Hon. James J. Ryan -- Qualified**

Judge Ryan was admitted to practice in 1992 and was elected to the bench in 2004. He is currently hearing jury trials in the First Municipal District. Before taking the bench, Judge Ryan was an Assistant Cook County State's Attorney from 1993 to 1995 and was the Director of Operations and General Counsel for the Cook County Sheriff's Office from 1995 to 2004. He has been assigned to the Fifth Municipal District and from September of 2008 until February of 2013, Judge Ryan served in the First Municipal District, presiding over felony preliminary healings, as well as criminal misdemeanor/ordinance bench and jury trials. Judge Ryan has written two legal texts; the First Municipal Jury Bench Book of 2015, and "First Municipal Juries in a Nutshell" which has been submitted for publication.

Judge Ryan is considered to have good legal ability. He is reported to be a conscientious judge who is well prepared and diligent. Practitioners say that he has a professional demeanor, and treats everyone fairly. In 2010, the Council noted that he had a serious temperament issue. Our 2016 evaluation shows a very different judicial behavior. The Council finds him Qualified for retention.

**Hon. Kevin M. Sheehan -- Qualified**

Judge Sheehan was elected to the bench in 1998. He currently is assigned to the Criminal Division hearing bench and jury trials. Before becoming a judge, he served as an Assistant Cook County State's Attorney. He has taught as a Trial Advocacy Instructor at DePaul University Law School since 2010.

Judge Sheehan is considered to be a knowledgeable judge with good legal ability. He is praised for his courtroom management and for his temperament. He is reported to be fair to all parties. The Council finds him Qualified for retention.

**Hon. Irwin J. Solganick – Qualified**

Judge Irwin J. Solganick was elected to the bench in 1986. He is currently assigned to the Law Division. He has also served in the First Municipal District and the Domestic Relations Division. Judge Solganick was admitted to practice in 1972. Prior to election, he was a Cook County Assistant State's Attorney and was also in private practice. Judge Solganick often fills in for the Acting Presiding Judge when he is away. Judge Solganick authored the Law Division Jury Bench Book chapters on Limiting Instruction, and Liens in 2015.

Judge Solganick is praised as a conscientious jurist who possesses good legal ability and is especially hard working. He is reported to have good courtroom management skills. He has a low key temperament and moves his call fairly and efficiently. The Council finds him Qualified for retention.

**Hon. Sharon Sullivan – Qualified**

Judge Sullivan was elected to the bench in 1992. Since June 2015 she has been the Acting Presiding Judge of the County Division. Her responsibilities include the administration of the Division and supervising the judges. She is working with the Clerk's office and attorneys on e-filing for the County Division and on updating the adoption and civil asset forfeiture forms available online. She meets regularly with stakeholders in her Division to get feedback on how the Division is operated. From 2000 t0 2015, she was assigned to the Criminal Division in the Second Municipal District. Prior to her election Judge Sullivan was an assistant State's Attorney and had previously been in private practice as well as with Corporation Counsel in the Chicago Department of Law.

Judge Sullivan is praised for her transition to her new assignment as Presiding Judge of the County Division. Practitioners report that she has demonstrated her grasp of new statutes and procedures. She has good courtroom management skills. She is reported to be fair to all parties and to have a professional demeanor. She is respected in her role as Presiding Judge. The Council finds her Qualified for retention.

**Hon. Susan Kennedy Sullivan – Qualified**

Judge Sullivan was elected to the bench in 2010. She is assigned to both the Elder Law and Probate Divisions. Before becoming a judge, she was a sole practitioner. Judge Sullivan has taught Elder Law at DePaul University College of Law since 1998.

Judge Kennedy is praised for her legal knowledge and ability in probate law and in her position with the Elder Law Division. It is reported that Judge Sullivan treats parties with equal respect and is fair to all parties. She has a low key temperament and has good courtroom management skills. The Council finds her Qualified for retention.

**Hon. John D. Turner, Jr. – Qualified**

Judge John Turner was elected to the Circuit Court in 1998. He is currently assigned to the Sixth Municipal District and was previously in the First Municipal District. Judge Turner was admitted to practice in 1984. Prior to election, he was an attorney for the Chicago Transit Authority, for the Chicago Park District and both with the Office of the Public Guardian and the Illinois Department of Children and Family Services. In 2010 the Council noted that Judge Turner had a serious temperament issue. In 2016, Judge Turner is now hearing a larger variety of cases. Practitioners say he has a good temperament, and is respectful to all parties before him. They also say that his determinations are well reasoned and thoughtful. He is also praised for having a good grasp of the law and that he has good courtroom management skills. The Council in 2016 finds him Qualified for retention.

**Hon. Edward Washington, II – Well Qualified**

Judge Washington was appointed to the bench by the Illinois Supreme Court in 2002 and was elected to the bench in 2004. He is currently hearing jury trials in the Law Division. Prior to becoming a judge, he was a partner with two law firms doing complex regulatory litigation and government relations work. He has also served as a division chief with the Illinois Attorney General's Office and as an administrative law judge with the Illinois Commerce Commission. He has also served as a senior attorney with MCI Telecommunications. He is currently hearing jury trials in the Law Division. Judge Washington has taught as Visiting Faculty at Harvard Law School since January of 2014.

Judge Washington is respected as a well prepared jurist who is fair to all parties. He is considered to have very good legal ability. He is praised for his temperament and his diligence. He brought to the trial bench a variety of experiences in complex litigation matters and is considered to have excellent court management skills. The Council finds him Well Qualified for retention.

**Hon. Alexander Patrick White – Qualified**

Judge White was elected to the bench in 1986. He is currently the Supervising Judge in the Tax & Miscellaneous Remedy Section of the Law Division, where he has served since his election. Judge White was admitted to practice in 1964. Prior to election, he was with the Federal Defender's office, counsel to the US Department of Labor and special assistant attorney general to the Illinois State Board of Investments.

Judge White is considered to be very knowledgeable regarding the variety of areas of law he handles as a judge. He is praised for his temperament, for being well prepared, and for his courtroom management skills. The Council finds him Qualified for retention.

**Hon. Thaddeus L. Wilson – Qualified**

Prior to being appointed to the bench by the Illinois Supreme Court in 2007, Judge Wilson worked in small firms. He was elected to the bench in 2010. He had substantial trial experience in both civil and criminal law matters and practiced in both the state and federal courts. He has been assigned to the Criminal Division since 2009, and currently presides over a felony courtroom. Judge Wilson is an adjunct professor at the John Marshall Law School teaching Criminal Procedure- Adjudication and Voting Rights and Election Law.

Judge Wilson is considered to have good legal ability. He is praised for his courtroom management skills and for doing the legal research necessary to allow him to stay abreast of the law. He has a professional demeanor. The Council finds him Qualified for retention.

## Judges Seeking Election in the November 2016

## General Election

Appellate Court – 1st District (all ballots) / To fill the vacancy of the Hon. James R. Epstein

**Hon. Eileen O'Neill Burke – Qualified**

Hon. Eileen O'Neill Burke became a judge in 2008 and currently sits in the Law Division presiding over commercial calendar cases. Judge Burke's previous judicial assignments included motion calls and tax and miscellaneous remedies cases. Prior to becoming a judge, Eileen O'Neill Burke served as an Assistant Cook County State's Attorney for about ten years and then went into private practice as a sole practitioner. Judge Burke is widely respected as a jurist. Lawyers report that she understands the issues, and praise her for her courtroom management skills. She grasps complex issues quickly and her opinions are considered well-reasoned. The Council finds her Qualified for the Appellate Court.

Appellate Court – 1st District (all ballots) / To fill the vacancy of the Hon. Patrick J. Quinn

**Hon. Bertina Lampkin – Well Qualified for the Appellate Court**

Hon. Bertina Lampkin was admitted to practice in 1974 and was elected to the Circuit Court in 1992. As a lawyer, she had extensive litigation experience in both complex trial and appellate court matters as an Assistant Cook County State's Attorney. She also has experience trying civil cases as an attorney with the Chicago Department of Law. Justice Lampkin was appointed to the Illinois Appellate Court in 2009.

As a trial judge, she heard criminal law matters at the Courthouse at 26th and California, and at that time was reported to be a very good, hardworking jurist who was praised for her writing skills. When the Council found her qualified for the

Appellate Court in 2009, her written evaluation materials included approximately 100 opinions from cases she heard at 26th street, including findings on post-conviction petitions and motions to quash and suppress. She has served as the chair of the Supreme Court criminal pattern jury instructions committee. In that position, she was responsible for writing the new death penalty instructions and the instructions for specific specialized jury verdict required by the *Apprendi* case. She has taught in the area of death penalty litigation.

As an Appellate Court judge, Justice Lampkin has demonstrated that she meets – and exceeds the higher standards that the Council uses in evaluating candidates for the Appellate Court. In the 2013 judicial evaluation, lawyers report that Justice Lampkin has exceptional command of substantive law, as well as procedural rules. She is praised for being hardworking and her written opinions are considered to be well-reasoned. She is an active participant in oral arguments and is reported to have good temperament. The Council finds Judge Lampkin Well Qualified for the Appellate Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Paul P. Biebel, Jr.

**Hon. John Fitzgerald Lyke, Jr. – Qualified**

Hon. John Fitzgerald Lyke, Jr. was admitted to practice in 1994 and was recently appointed to the Circuit Court by the Illinois Supreme Court. He was a sole practitioner doing criminal defense work. He was also an Administrative Hearing Officer for the Chicago Department of Business Affairs and Licensing. He served for six years as an Assistant Cook County State's Attorney where his work included the prosecution of complex criminal law matters. Judge Lyke is considered by most lawyers and judges contacted for this evaluation to be a good lawyer who is knowledgeable and an appropriately zealous advocate for his clients. He has substantial litigation experience in complex matters. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Richard J. Elrod

**Hon. Rosanna Patricia Fernandez – Qualified**

Hon. Rosanna Patricia Fernandez was admitted to practice in Illinois in May 1997. She was recently appointed to the bench by the Illinois Supreme Court. Before taking the bench, she was a partner at Sanchez and Daniels doing personal injury litigation. From 1997-2000 she worked at Eannace Lowery & Meade as an Associate Attorney. Judge Fernandez is considered to have good legal ability and is praised for her knowledge of the law. Most respondents say she has a good temperament. All say she

is a zealous advocate for her clients. She has substantial jury trial experience. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Thomas L. Hogan

**Hon. Allison Conlon – Qualified**

Hon. Allison Conlon was admitted to practice in 2000 and was recently appointed to the bench by the Illinois Supreme Court. She began her legal career as a law clerk for Judge Charles Kocoras of the federal district court, and then went on to become an Associate and Partner with the law firm of Wildman Harrold. She then joined Barnes and Thornburg as a partner. She did tort and commercial litigation for both firms. She maintained an active pro bono practice, as well. She is considered to have very good legal ability and trial skills. She is praised for her temperament and for being hardworking. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Michael J. Howlett, Jr.

**Hon. Aleksandra Gillespie – Qualified**

Hon. Aleksandra Gillespie was admitted to practice in 1993, and was recently appointed to the bench by the Illinois Supreme Court. Before becoming a judge, she was a career First Assistant Cook County State's Attorney, and served as a First Chair prosecutor in felony matters. She has substantial litigation experience in both jury and bench criminal law trials. Ms. Gillespie is considered to have very good trial skills. She is reported to have been a very knowledgeable, hard-working, and fair prosecutor. She is considered to have very good legal ability and a professional demeanor. She is praised for treating colleagues, opposing counsel, and pro se litigants with respect. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Marilyn F. Johnson

**Carolyn Joan Gallagher -- Qualified**

Carolyn Joan Gallagher was admitted to practice in 1982. She is a solo practitioner focusing on litigation, appellate work, real estate, and transactional matters. She has done commercial litigation in both state and federal courts. Between 1985 and 1992 she was an associate with Dardick & Denlow and between 2000 and 2004 was a Legal Writing Instructor at the DePaul University College of Law. As a writing consultant, she has assisted in the writing and editing of several law practice-related books. Ms. Gallagher is praised for her legal ability and knowledge. She has substantial commercial litigation experience. She is reported to be a zealous advocate for her

clients, but she is praised for professional demeanor. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Themis N. Karnezis

**Mary Kathleen McHugh – Qualified**

Mary Kathleen McHugh was admitted to practice in 1993. She is a Partner at the law firm of Parrillo, Weiss & O'Halloran where she concentrates in personal injury and subrogation litigation. She has spent most of her legal career with this firm. She is considered to have good legal ability and has substantial litigation-related experience. She is praised for her knowledge of the law and for her diligence in dealing with opposing counsel. She is reported to have courtroom skills and a good temperament both in court and with opposing counsel. She is also reported to be a good mentor to less experienced attorneys. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Noreen Valeria Love

**Brendan O'Brien – Well Qualified**

Brendan O'Brien was admitted to practice in 1996. He has been a a Partner in the firm of Hinshaw & Culbertson since 1999 and was an attorney with Connelly and Schroeder between 1996 and 1999. Mr. O'Brien has substantial litigation experience in insurance defense and medical malpractice cases. He is considered to have very good legal ability and is praised for being a hard-working, well-prepared practitioner. He is reported to have excellent litigation skills and his integrity is unquestioned. The Council finds him Well Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Patrick W. O/Brien

**Maureen O'Donoghue Hannon -- Qualified**

Maureen O'Donoghue Hannon was admitted to practice in 1991. She is an Assistant Cook County State's Attorney working in the Conflict Counsel Unit, where she is responsible for the defense of Cook County Offices, Elected and Appointed Officials, and Cook County employees in various areas of state and federal civil litigation. Within the State's Attorney's Office, she has served in the Special Projects and Assignment Unit, the Municipal Litigation Unit, the Transactions Unit, and the Labor and Employment Unit. She came to the State's Attorney's Office in 1994 after a stint in private practice and then left the office between 1995 and 1998 to be an Associate

with Burke, Burns, and Pinelli, Ltd. She returned to the office in 1999. Ms. Hannon is considered to have good legal ability. She has extensive experience in more complex litigation matters, and she is praised for her litigation skills and for her professional demeanor. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Stuart E. Palmer

**Susana L. Ortiz -- Qualified**

Susana L. Ortiz was admitted to practice in 2001. She is a staff attorney doing criminal defense litigation in the Law Offices of the Chicago-Kent College of Law. Prior to her current position, Ms. Ortiz worked as an Associate in the Law Offices of Raul Villalobos. She is praised as a good practitioner with good legal ability. She is reported to be knowledgeable and to have good litigation skills. She has substantial litigation experience. Lawyers say she is a zealous and persuasive advocate for her clients. They also praise her for being trustworthy and for having a good temperament. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon. Susan Ruscitti Grussel

**Hon. Daniel Patrick Duffy – Not Qualified**

Hon. Daniel Patrick Duffy was appointed to the Circuit Court by the Illinois Supreme Court in 2014 and currently sits in the First Municipal District. He was admitted to practice in Illinois in 1995 and in Wisconsin in 1994. Before becoming a judge, he was an attorney with several private firms doing a variety of matters including criminal defense, commercial litigation, and insurance litigation. Judge Duffy presents several issues. Prior to becoming a judge, many attorneys were critical of Judge Duffy, noting incivility in their dealings with him. While some attorneys praised his litigation skills, the Council on balance found him Not Qualified in an earlier evaluation. Since becoming a judge, many lawyers have praised his knowledge and court management skills. But the Council is also concerned that the U.S. Court of Appeals for the Seventh Circuit recently found that Judge Duffy as a personal litigant had brought an appeal that the Court believed was frivolous, and levied sanctions. On balance, the Council finds Judge Duffy Not Qualified for the Circuit Court.

Circuit Court – Cook County (all ballots) / To fill the vacancy of the Hon.Richard F. Walsh

**Patrick J. Powers -- Qualified**

Patrick J. Powers was admitted to practice in 1987. He has been a sole practitioner throughout his career focusing on domestic relations, as well as real estate and

contract litigation. He is reported to have good legal ability and to be hard-working. Lawyers report that he is knowledgeable and always prepared. He has substantial litigation-related experience and a good temperament. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (First Subcircuit) / To fill the vacancy of the Hon. Cynthia Y. Brim

**Jesse Outlaw -- Qualified**

Jesse Outlaw was admitted to practice in 1980. Mr. Outlaw has been a solo practitioner in the City of Chicago for 33 years. He represents clients in real estate, divorce, probate and bankruptcy matters. He is also appointed by judges in the Probate Division to act as guardian ad litem for adult disabled people. Around 4 years ago, Mr. Outlaw joined the law firm of the Stuttley Group, LLC as an associate member. As an associate with the Stuttley Group, he represents legislators, park district boards and school boards; when necessary, he also conducts hearings on red light violations for municipalities. Mr. Outlaw is praised for his temperament and for his diligence. He is considered an intelligent lawyer who is a zealous advocate for his clients. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (First Subcircuit) / To fill the vacancy of the Hon. Vanessa A. Hopkins

**Rhonda Crawford – Not Recommended**

Rhonda Crawford failed to submit materials for evaluation. The Council finds her Not Recommended for the Circuit Court.

**Hon. Maryam Ahmad – Qualified (may run as a write-in candidate)**

Hon. Maryam Ahmad was admitted to practice in 2000, and was recently appointed to the bench by the Illinois Supreme Court. She had been in private practice, a full time attorney volunteer at First Defense Legal Aid, an Assistant Cook County Public Defender, and an Assistant Cook County States' Attorney. She is considered to have good legal ability and has a range of litigation experience. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (Second Subcircuit) / To fill the vacancy of the Hon. Drella Savage

**D. Renee Jackson – Not Recommended**

D. Renee Jackson failed to submit materials for evaluation. The Council finds her Not Recommended for the Circuit Court.

Circuit Court – Cook County (Fourth Subcircuit) / To fill the vacancy of the Hon. William J. Kunkle

**Hon. Edward J. King -- Qualified**

Hon. Edward J. King was appointed to the Circuit Court by the Illinois Supreme Court in 2014. He was a sole practitioner and since 1988 had served as a Special Assistant Illinois Attorney General. He is considered to have good legal ability and temperament. He had substantial litigation experience in more complex matters. He is praised for his temperament. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Fifth Subcircuit) / To fill the vacancy of the Hon. Loretta Eadie-Daniels

**Hon. Leonard Murray – Qualified for the Circuit Court**

Hon. Leonard Murray was admitted to practice in 1974. He spent most of his career prior to becoming a judge as a sole practitioner. He was elected to be an Associate Judge in 2007. He is currently sitting in the First Municipal District presiding over jury trials. He presided over forcible entry and detainer cases for most of his judicial career. Since becoming a judge, he has received praise for his knowledge of the law and for his ability to manage high volume courtrooms. Lawyers note his ability and willingness to assist pro se litigants in an effective and appropriate manner. Some attorneys representing landlords report that Judge Murray favored tenants. Most attorneys say that he is fair to all parties. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Fifth Subcircuit) / To fill the vacancy of the Hon. Jane L. Stuart

**Hon. Freddrenna Lyle -- Qualified**

Hon. Freddrenna Lyle was admitted to practice in 1980. She was appointed to the Circuit Court by the Illinois Supreme Court in 2011. She was recently assigned to the Elder Law Division Before becoming a judge, she worked in small firms and as a solo practitioner. She had substantial experience in more complex litigation matters, and was a respected practitioner. She served for 13 years as a member of the Chicago City Council. Judge Lyle is reported to be knowledgeable and is praised for her ability to manage a high volume court call. She is reported to have a good judicial temperament. The Council finds Judge Lyle Qualified for the Circuit Court

Circuit Court – Cook County (Fifth Subcircuit) / To fill the vacancy of the Hon. Shelli D. Williams-Hayes

**Daryl J. Jones -- Qualified**

Daryl J. Jones was admitted to practice in 2005. Mr. Jones is a member of the Illinois Prisoner Review Board, having been appointed by the Governor and confirmed by the Illinois Senate. From 2005 to 2013 he served as an Assistant Cook County State's Attorney. He is considered to have good legal ability with a variety of experiences. The Council is concerned about the short length of time he has been a lawyer but he had substantial litigation experience as an Assistant Cook County State's Attorney and is praised for the work he has done more recently. He is praised for his temperament. On balance, the Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Sixth Subcircuit) / To fill the vacancy of the Hon. Edmund Ponce de Leon

**Eulalia "Evie" De La Rosa -- Qualified**

Eulalia "Evie" De La Rosa was admitted to practice in 2004. She has been a career Assistant Cook County Public Defender since 2005, and has been assigned to the felony trial division since 2009. For a year after becoming a lawyer, she worked for the Cook County Office of the Chief Judge as a staff attorney and court coordinator. She is considered to have good legal ability with substantial litigation experience, despite her relatively short career. She is praised for her litigation skills and her temperament. She is active in community activities. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (Sixth Subcircuit) / To fill the vacancy of the Hon. Leida Gonzalez Santiago

**Richard Cooke -- Qualified**

Richard Cooke was admitted to practice in 1992. He is a sole practitioner. From 1992 to 1994 he was a trial attorney for a captive insurance company law firm, and served as in-house staff counsel for CNA insurance from 1994 to 1997. Since 2008 he has operated a self-funded pro bono legal clinic – the Cooke Legal Aid Clinic. He is active in community activities. Mr. Cooke is reported to have good legal ability and temperament. He is considered to be a good lawyer who is praised for his integrity and for being exceptionally hard-working. He has substantial litigation experience in complicated matters, and his practice involves complex transactional matters that further demonstrate the analytic thinking necessary to be a good judge. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Sixth Subcircuit) / Additional Judgeship A

**Hon. Anna Loftus – Qualified**

Hon. Anna Loftus has been practicing law for about 15 years, and was recently appointed to the bench by the Illinois Supreme Court. She had been a partner at Hall, Prangel and Schoonveld doing medical malpractice and appellate work. She is a former Associate at Peterson & Ross. She is considered to have good legal ability and has substantial experience in litigation matters. She is praised for her temperament and her courtroom skills. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (Seventh Subcircuit) / To fill the vacancy of the Hon. Anthony L. Burrell

**Hon. Marianne Jackson -- Qualified**

Hon. Marianne Jackson was admitted to practice in 1973. She has served as an Associate Judge since 1997 and has been assigned to the Juvenile Justice Division since 1999. Prior to becoming a judge she served as an Assistant United States Attorney and as a private criminal defense counsel. She served as a Deputy U.S. Attorney and was named Chief of the Criminal Division. As a lawyer, she had substantial litigation experience in complex matters and was praised for her litigation skills. As a judge, she is reported to possess good legal ability and to be very knowledgeable. She has a good judicial temperament and is praised for being well-prepared. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (Seventh Subcircuit) / To fill the vacancy of the Hon. Anita Rivkin-Carothers

**Hon. Patricia Susan Spratt – Well Qualified**

Hon. Patricia Susan Spratt was admitted to practice in 1991. She was appointed by the Illinois Supreme Court to the Circuit Court in 2015. From 1992 to 1995 she was an associate at a small firm doing civil litigation involving securities issues. She then became a partner as Shefsky & Froelich where she does both trial and appellate work. She is considered to have very good legal ability and her knowledge of the law is well regarded. She has written and lectured extensively, including a book on professional responsibility which is used as a source for the members of the Illinois Supreme Court Committee on Professional Responsibility on which she serves. She is considered to be a resource for research and trial tactics. She is praised for her professional demeanor. Judge Spratt had substantial experience in a variety of complex litigation matters. The Council finds her Well Qualified for the Circuit Court.

Circuit Court – Cook County (Ninth Subcircuit) / To fill the vacancy of the Hon. Andrew Berman

**Hon. Jerry A. Esrig – Highly Qualified**

Hon. Jerry A. Esrig was admitted to practice in 1978 and was first appointed to the Circuit Court by the Illinois Supreme Court in 2013. He lost a Primary election in 2014. He was appointed to the Circuit Court by the Illinois Supreme Court for another interim term in 2014. He currently sits in the First Municipal District hearing a variety of cases. Prior to becoming a judge, he was a Partner with a small firm, focusing on sophisticated personal injury and commercial litigation matters. Mr. Esrig was an accomplished litigator with substantial litigation experience in a variety of complex matters. He was active in pro bono matters, as well. He was praised for his litigation skills, as well as for his professionalism and integrity. He was considered to have excellent legal ability and is always well-prepared. Mr. Esrig was a highly respected practitioner and a role model for younger lawyers. As a judge, he is reported to have good courtroom management skills, and is praised for his judicial temperament when dealing with both seasoned attorneys and pro se litigants. He is contributing written work to the Judicial Benchbook (a judicial handbook) now being prepared on credit card debt, the City of Chicago Landlords and Tenants Ordinance, Subrogation, and Guaranties. The Council finds him Highly Qualified for the Circuit Court.

Circuit Court – Cook County (Tenth Subcircuit) / To fill the vacancy of the Hon. Garritt E. Howard

**Hon. Eve Marie Reilly**

Hon. Eve Marie Reilly was admitted to practice in 1997. She was appointed to the Circuit Court by the Illinois Supreme Court in 2014. She was a career Assistant Cook County State's Attorney, having extensive litigation and appellate experience. As a lawyer she was considered to have good legal ability and temperament. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (Eleventh Subcircuit) / To fill the vacancy of the Hon. Carol A. Kelly

**Catherine Ann Schneider -- Qualified**

Catherine Ann Schneider was admitted to the Illinois bar in 1994. She began her career at Beverly & Pause, focusing on civil litigation of personal injury defense. In 1998, she started working for State Farm, investigating body injury claims. From 2000-2001 she oversaw the Attorney of the Day program, which produced pro bono counsel to defendants in eviction court. She then worked at Schneider & Tarr (a two person law firm) before moving on to become the Vice President of Operations at Millennium Financial in 2002. Following that, she worked at Career Services for Loyola Law for two years and then at the Law Offices of Deborah Ashen for another two. Currently, Ms. Schneider is the supervising Attorney for CARPLS.

Regarding her pro bono work, Ms. Schneider served as a guardian ad litem as well as an attorney for Chicago Volunteer Legal Services. She has also spent seven years

helping Chicago Legal Aid Online. Lastly, she has spent time on the Board of Directors, Associate Board and as a Volunteer Attorney at CARPLS. Ms. Schneider has limited trial experience but has extensive motion practice in a variety of Cook County courtrooms. She has conducted more than 50 arbitrations. She is reported to be smart, motivated, and a good advocate. Attorneys with whom she works praise her ability to supervise and teach. She is reported to be always civil but clear in her dealings with opposing counsel. She has authored numerous published materials related to the practice of law and has demonstrated a commitment to pro bono work. The Council finds her Qualified for the Circuit Court.

Circuit Court – Cook County (Eleventh Subcircuit) / To fill the vacancy of the Hon. Susan F. Zwick

**Hon. William Bernard Sullivan – Qualified**

Hon. William B. Sullivan was admitted to practice in 1992. He was appointed by the Illinois Supreme Court to the Circuit Court in 2015. He had been a sole practitioner since 1992. He worked on various civil legal issues including, but not limited to, commercial and real estate litigation and transactions. Much of his trial experience has been litigation involving eviction cases turning on interpretations of commercial leases. He is active in community affairs. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Twelfth Subcircuit) / To fill the vacancy of the Hon. Joseph Kazmierski, Jr.

**(D) Hon. Marguerite A. Quinn – Well Qualified**

Hon. Marguerite A. Quinn was admitted to practice in 1986. She was elected as an Associate Judge in 2007 and currently serves in the Skokie Courthouse hearing a variety of cases including domestic violence and criminal law matters. From 1999 to 2007, Judge Quinn was in private practice focusing on real estate taxation. From 1986 to 1998, she served as an Assistant Cook County State's Attorney. As a lawyer, she was considered to have good legal ability and had substantial litigation experience. As a judge, she is praised for her courtroom management and for her ability to handle a variety of matters, including those that are complex. She is praised for her calm and even temperament. She is considered well-versed in the law and respondents say she is always well-prepared. The Council finds her Well Qualified for the Circuit Court.

**(R) Thomas Flannigan – Qualified**

Thomas Flannigan has been a lawyer since 1983. He has a MA degree in International Relations. After clerking with Illinois Supreme Court Justice William Clark, he served as an attorney with the firms of Arvey Hodes and Freeborn & Peters, concentrating on international business transactions and litigation. He worked as an attorney in Japan in 1988 and between 1991 and 1992. Since 1990, he has been a sole practitioner

focusing on civil litigation, intellectual property matters, and estate planning. He has had a limited number of cases go to trial but has been involved in other aspects of complex civil litigation matters. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Twelfth Subcircuit) / To fill the vacancy of the Hon. Veronica B. Mathein

**(D)Janet Cronin Mahoney -- Qualified**

Janet Cronin Mahoney was admitted to practice in 1987. She is a career Assistant Cook County State's Attorney where she is a supervisor in the Appellate Division. She has handled more than 280 appellate matters. Lawyers generally report that she has good legal ability. As a seasoned appellate lawyer, she has experience with a large number of issues. The Council finds her Qualified for the Circuit Court.

**(R) James L. Allegretti -- Qualified**

James L. Allegretti was admitted to practice in 1978. From 2005 to 2011, Mr. Allegretti served as the Fourth Ward Alderman for the city of Park Ridge. Since 1990, he has been the Principal in the firm of Allegretti and Associates, focusing on Plaintiff's personal injury cases and petitioners' workers compensation representation. He has practiced as a solo practitioner or in a small firm doing traffic, DUI, personal injury and workers' compensation cases since 1978. He is considered to have good legal knowledge and ability. Lawyers say he knows the law and has a good temperament. He is civil even in difficult cases. He has substantial litigation experience. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Twelfth Subcircuit) / To fill the vacancy of the Hon. Sandar Tristano

**(D)Hon. Carrie Hamilton – Qualified**

Hon. Carrie Hamilton was admitted to practice in 1996. She was appointed by the Illinois Supreme Court to the Circuit Court in 2015. She was an Assistant United States Attorney who had prosecuted a number of high visibility cases in Chicago. She is praised for her legal ability and for her courtroom skills. She is considered to have a good temperament. She has extensive litigation experience in complex matters. The Council finds her Qualified for the Circuit Court.

**(R) David Lawrence Studenroth -- Qualified**

David Lawrence Studenroth was admitted to the Illinois bar in 1987. In 1987 he became an Assistant Cook County State's Attorney. In 1998 he began a solo practice

focusing on criminal defense matters. Mr. Stedenroth is considered to have good legal ability and temperament. He has litigation experience and is reported to be a solid practitioner. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Twelfth Subcircuit) / Additional Judgeship A

**(D) James Edward Hanlon – Qualified**

James Edward Hanlon was admitted to practice in 1984. He is in private practice. He is considered to have good legal ability and temperament. He has substantial litigation experience. The Council finds him Qualified for the Circuit Court.

**(R) Steven A. Kozicki -- Qualified**

Steven A. Kozicki was admitted to practice in 1985. Since 1998 he has been a sole practitioner with a general practice. From 1989 to 1998, he was a trial attorney with a small firm, and between 1986 and 1988, he served as a DuPage County Assistant Public Defender. He is considered to have good legal ability and is praised for being an experienced lawyer with good litigation skills in a variety of areas. He is reported to have a good temperament. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Thirteenth Subcircuit) / To fill the vacancy of the Hon. Thomas P. Fecarotta

**(D) Hon. Ketki Shroff Steffen -- Qualified**

Hon. Ketki Shroff Steffen was admitted to practice in 1991. She was appointed to the Circuit Court for a second time in 2015. In 2013 she was a sole practitioner and from 2013-2015 she served as an Administrative Law Judge for the Illinois Workers' Compensation Commission. She was appointed by the Illinois Supreme Court to the Circuit Court in 2010 and served as a Circuit Judge between 2010 and 2013. From 1991 to 2010, she served as an Assistant Cook County State's Attorney. She is considered to have good legal ability. As a lawyer, she enjoyed a reputation as a trusted and experienced litigator. As a judge, she is praised for her ability to grasp the issues, for her courtroom management, and for her temperament. The Council finds her Qualified for the Circuit Court.

**(R) Kevin M. O'Donnell -- Qualified**

Kevin M. O'Donnell was admitted to practice in 1988. He has been a sole practitioner for most of his career, although he practiced with small firms for several years early in his career. His current practice concentrates on estate planning, probate, litigation, corporate work, and real estate matters. He is active in community activities. He is considered to have good legal ability and knowledge of the law. He reports handling

relatively few trials, but he has been involved in substantial pretrial practice activities in more complex matters. The Council finds him Qualified for the Circuit Court.

Circuit Court – Cook County (Fourteenth Subcircuit) / To fill the vacancy of the Hon. Lisa Ruble Murphy

**Matthew Link – Not Recommended**

Matthew Link failed to submit materials for evaluation. The Council finds him Not Recommended for the Circuit Court.

Chicago Council of Lawyers

750 N. Lake Shore Dr. 4th Floor

Chicago, Illinois 60611

Phone: 312-988-6565

Email: malcolmrich@chicagocouncil.org

Website: www.chicagocouncil.org

First Division
May 30, 2006

No. 1-04-2212

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, | ) | Appeal from the Circuit Court of Cook County. |
| v. | ) | No. 91 CR 22976 |
| KEITH WALKER, Defendant-Appellant. | ) | Honorable Nicholas Ford, Judge Presiding. |

O R D E R

Defendant Keith Walker appeals from the summary dismissal of his *pro se* petition for relief under the Post-Conviction Hearing Act (Act). 725 ILCS 5/122-1 *et seq.* (West 2004). He contends that the circuit court erred in dismissing his petition at the first stage of proceedings because he presented the gist of a meritorious claim that his due process rights were violated when he was coerced into confessing. In a supplemental brief, defendant further contends that the order summarily dismissing his petition is void because the circuit court judge was disqualified from ruling on it.

Defendant was charged with the first degree murder and armed robbery of Shawn Wicks. After being questioned by police, defendant signed a statement admitting his guilt which he subsequently moved to suppress. Following a hearing on September

20, 1994, the circuit court denied the motion. The case proceeded to a bench trial and defendant was convicted of first degree murder and attempted armed robbery, then sentenced to natural life imprisonment. This court affirmed that judgment on direct appeal, finding that the trial court did not err in admitting the victim's identification of defendant as a dying declaration. People v. Walker, No. 1-95-0976 (1997) (unpublished order under Supreme Court Rule 23).

On March 30, 2004, defendant filed a *pro se* postconviction petition, alleging, *inter alia*, that the trial court erred in admitting the dying declaration of the victim, and that his due process rights were violated where his confession was the result of coercion and police brutality. In support of the latter contention, defendant referenced Illinois cases purportedly involving similar allegations, "ops reports," "[t]he Former Governor Ryans [*sic*] report," and the fact that Commander John Burge and detectives involved in defendant's case were fired. The circuit court summarily dismissed defendant's petition as frivolous and patently without merit. Although our *de novo* review of his dismissal order (People v. Coleman, 183 Ill. 2d 366, 387-88 (1998)), indicates that it was proper (People v. Collins, 202 Ill. 2d 59, 66 (2002); People v. Blair, 215 Ill. 2d 427, 443 (2005)), we find, nevertheless, that we must vacate the court's ruling based on the issue raised by defendant in his

supplemental brief.

Defendant contends that the summary dismissal of his petition was void because the circuit court judge who reviewed it was, at the time of his trial, an assistant State's Attorney and a material witness at his suppression hearing. He therefore claims that the judge was disqualified from ruling on the petition pursuant to Supreme Court Rule 63(C)(1)(b). Official Reports Advance Sheet No. 26 (December 24, 2003), R. 63(C)(1)(b), eff. December 5, 2003.

We note initially that an appellant may not ordinarily raise an issue for the first time on review. People v. Austin, 116 Ill. App. 3d 95, 101 (1983). However, given the procedural process inherent in the Act and the duty of a court to avoid the appearance of impropriety, we relax the waiver rule in this case. Austin, 116 Ill. App. 3d at 101. We further note that the State has not filed a response to defendant's argument.

Rule 63(C)(1)(b) provides that:

> "A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where *** the judge served as a lawyer in the matter in controversy *** or the judge has been a material witness concerning it."

Official Reports Advance Sheet No. 26 (December 24, 2003), R. 63(C)(1)(b), eff. December 5, 2003. The record shows that Assistant State's Attorney Nick Ford testified at defendant's suppression hearing that he prepared defendant's signed handwritten statement. He further testified that neither he nor anyone in his presence subjected defendant to any form of physical or psychological coercion, as defendant alleged in his motion.

The record further shows that defendant's postconviction petition was summarily dismissed by Judge Nicholas Ford on April 20, 2004. According to defendant, Judge Ford's judicial profile states that he was a Cook County Assistant State's Attorney from 1988-1998. It thus appears likely that the circuit court judge who summarily dismissed defendant's petition is the same person who interviewed defendant and prepared his written statement in 1991. If that is the case, Judge Ford would have been a material witness in the matter raised by defendant in his petition, and should have disqualified himself under Supreme Court Rule 63(C)(1)(b). See People v. Vasquez, 307 Ill. App. 3d 670, 673 (1999) (where circuit court judge participated as assistant State's Attorney in original prosecution of defendant, he was

disqualified under Rule 63(C)(1)(b) from ruling on defendant's postconviction petition).

There is no indication that Judge Ford was aware of this conflict or that he was motivated or biased in his decision. See Vasquez, 307 Ill. App. 3d at 674. Nevertheless, we find under the circumstances that we must vacate the summary dismissal of defendant's postconviction petition and pursuant to Supreme Court Rule 366(a)(5) (155 Ill. 2d. R. 366(a)(5)), we remand his cause to the circuit court for further proceedings under the Act. 725 ILCS 5/122-4 through 122-6 (West 2004). On remand, we direct Judge Ford to determine whether he is the same Nicholas Ford who testified at defendant's suppression hearing. If he answers that question in the affirmative, he should recuse himself and the matter should be reassigned.

Vacated and remanded with directions.

McBRIDE, J., with GORDON and BURKE, JJ., concurring.

# Illinois Official Reports

## Appellate Court

***People v. Jakes*, 2013 IL App (1st) 113057**

| | |
|---|---|
| Appellate Court Caption | THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONY JAKES, Defendant-Appellant. |
| District & No. | First District, Third Division<br>Docket No. 1-11-3057 |
| Filed | December 11, 2013 |
| Held<br>*(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)* | The denial of defendant's postconviction petition alleging that two detectives obtained his confession through the use of threats and beatings was reversed and the cause was remanded with directions to allow defendant to seek discovery of evidence supporting his allegations of official misconduct and to amend his petition based on any such evidence he might discover, notwithstanding the State's contention that there were no allegations of police misconduct at the time defendant's motion for discovery was denied, since police misconduct was adequately alleged in the initial petition and the trial court abused its discretion in denying defendant's motion for discovery in relation to his petition. |
| Decision Under Review | Appeal from the Circuit Court of Cook County, No. 92-CR-5073; the Hon. Nicholas Ford and the Hon. Michael Toomin, Judges, presiding. |
| Judgment | Reversed and remanded. |

Counsel on Appeal

Loevy & Loevy, of Chicago (Tara Thompson, Jon Loevy, Russell Ainsworth, and Debra Loevy-Reyes, of counsel), for appellant.

Anita M. Alvarez, State's Attorney, of Chicago (Alan J. Spellberg and Christine Cook, Assistant State's Attorneys, of counsel), for the People.

Panel

JUSTICE NEVILLE delivered the judgment of the court, with opinion.
Presiding Justice Hyman and Justice Mason concurred in the judgment and opinion.

## OPINION

¶ 1 This case involves a postconviction petitioner's right to discovery. A jury found Anthony Jakes guilty of murder, based largely on a confession Jakes signed after questioning by Detectives Michael Kill and Kenneth Boudreau. Jakes testified that he signed the statement because Kill beat him and threatened him while Boudreau watched. Kill and Boudreau denied that they beat or threatened Jakes. The jury and the trial court that assessed the credibility of Kill, Boudreau and Jakes never heard evidence that Kill and Boudreau beat and threatened suspects in other cases to obtain signed confessions and that they committed perjury to convince courts and juries to rely on the coerced confessions.

¶ 2 Jakes filed a postconviction petition and he sought discovery concerning the misconduct of Kill and Boudreau in other cases. The circuit court denied the motion for discovery and then held that the evidence Jakes presented without discovery did not sufficiently establish Kill's pattern and practice of beating and threatening suspects to get them to sign confessions. The circuit court dismissed the postconviction petition without holding an evidentiary hearing on the allegations of Kill's and Boudreau's misconduct. We hold that the trial court abused its discretion when it denied Jakes' motion for discovery concerning the misconduct of Kill and Boudreau in other cases. We reverse and remand for further proceedings on the postconviction petition.

¶ 3 BACKGROUND

¶ 4 On September 15, 1991, a police officer found Rafael Garcia lying in the street, dying from multiple gunshot wounds, next to a car with a broken window on the passenger side. Around 12:30 p.m. the following day, Officer Thomas Pack went to a home near the murder scene

where Jakes, then 15 years old, lived with his aunt, Jessie Mae Jones. After entering the home, Officer Pack permitted Jakes to put on his clothes, and then Pack took Jakes to police headquarters. Kill and Boudreau began interviewing Jakes after 4 p.m. Police also picked up Gus Robinson on September 16, 1991, for questioning about the murder of Garcia. Around 4:30 a.m. on September 17, 1991, Jakes signed a statement an assistant State's Attorney wrote out. Robinson signed a statement around the same time, after eight hours of questioning.

¶5 According to the statement Jakes signed, on September 15, 1991, Arnold Day, a friend of Jakes, asked Jakes to watch for police while Day robbed a man he saw in a nearby sandwich shop. As Jakes walked to the corner, he met Robinson. He asked Robinson to help him watch for police. Robinson refused to help and drove off. Jakes told Day he saw no police in the area. When the intended victim left the sandwich shop, Day said to him, "This is a stickup." The man ran to his car and started it. Day then shot the man through the car's passenger window. Jakes ran home. He looked out at the street and saw the man moving on the ground.

¶6 Photographs taken on September 18, 1991, one day after Jakes signed the statement, showed that Jakes had several fresh bruises. A doctor examined Jakes in custody on September 20, 1991.

¶7 Robinson signed a statement that said that on September 15, 1991, Jakes, who knew Robinson from the neighborhood, asked Robinson to help watch for police while Day robbed a man. Robinson refused to help. As he drove away, he heard some gunshots.

¶8 Prosecutors charged Jakes with murder and attempted robbery. Jakes moved to quash his arrest and suppress the statement he signed. At the hearing on the suppression motion, the State admitted that police had no warrant when they picked up Jakes from his home. Jakes testified that when police came to his home on September 16, 1991, they slammed him against a wall and handcuffed him. At the police station, one of the officers put his hands in Jakes' pocket then showed Jakes a tinfoil packet that the officer said held cocaine. Jakes did not know where the tinfoil packet came from. Kill accused Jakes of shooting Garcia. When Jakes said he knew nothing about it, Kill slapped him and threatened to push him out a window. Kill said some Latin Kings would attack Jakes' family, if Kill asked them to do so. Kill knocked Jakes on the floor and kicked him while Boudreau watched. Jakes identified the photographs taken on September 18, 1991, and he testified that the photographs showed the injuries Kill inflicted on Jakes' arm, leg, side, stomach and back. Jakes eventually signed the statement the assistant State's Attorney wrote out. Jakes admitted that he did not tell the doctor at the jail, the police, or the assistant State's Attorney how he sustained the injuries. Because of Kill's beating and threats, Jakes signed the statement that said police treated him well. Jakes testified that he did not get into any physical fight on September 15 or 16 before he came to the police station, and he never said to any officer that such a fight had occurred.

¶9 Jakes' aunt, Jones, testified that police entered her home without her permission and brought Jakes out of his bedroom in handcuffs. Pack testified that Jones permitted him and other officers to enter and go to Jakes' bedroom. According to Pack, police did not handcuff Jakes in his home. Jakes agreed to come to the police station for questioning. Pack found the tinfoil packet of cocaine in the pocket of the pants Jakes chose to put on when police picked him up for questioning. Pack arrested Jakes at the police station after finding the drugs.

¶ 10 Kill testified that he never struck or threatened Jakes, and Jakes volunteered information about the murder and his contact with Robinson. Boudreau testified that Jakes told him that three black men fought with him on September 16, 1991. The prosecution argued that the fight, and not police brutality, explained Jakes' bruises.

¶ 11 The trial court found the testimony of the officers more credible than the testimony of Jakes and Jones. The court denied the motion to quash the arrest and suppress the statement.

¶ 12 At trial, Robinson testified in accord with the statement he signed. Robinson, who had two prior felony convictions, admitted that prosecutors agreed not to charge him with contempt for failing to show up for a scheduled court date if he testified in accord with the statement an assistant State's Attorney wrote out and Robinson signed.

¶ 13 Police officers testified about their investigation into Garcia's murder. No physical evidence or testimony, apart from Robinson's statement, tied Jakes to the crime. The assistant State's Attorney read into the record the statement Jakes signed. The statement included no verifiable, correct details about the crime that the police did not know before questioning Jakes.

¶ 14 Jakes again testified about the circumstances of his arrest and the beating and threats that caused him to sign the false statement. Kill repeated his testimony that Jakes volunteered the confession, including the encounter with Robinson. Kill swore that he did not coerce or threaten Jakes in any way. Boudreau corroborated Kill's testimony, swearing that he never saw any officer strike or threaten Jakes.

5 The jury found Jakes guilty of armed robbery and murder. The trial court sentenced Jakes to 40 years in prison for murder and 15 years for attempted armed robbery, with the sentences to run concurrently. The appellate court affirmed the conviction and sentences on direct appeal. *People v. Jakes*, No. 1-93-4471 (1995) (unpublished order under Supreme Court Rule 23).

¶ 16 In 1996, Jakes filed a postconviction petition and the circuit court appointed counsel to represent him in postconviction proceedings. Counsel sought multiple continuances in a quest for evidence to support Jakes' assertion in his postconviction petition that Kill beat him and threatened him to induce him to sign the false statement used as evidence at trial. Due to an ongoing investigation into criminal conduct by several police officers, including Kill and Boudreau, counsel had very limited access to evidence that Kill and Boudreau coerced other suspects to sign confessions and committed perjury to obtain convictions based on the coerced confessions.

¶ 17 In 2004, counsel finally stopped trying to obtain evidence of misconduct by Kill and Boudreau in other cases to support Jakes' postconviction petition. The attorney filed a supplement to Jakes' postconviction petition, adding allegations of ineffective assistance of trial and appellate counsel. The attorney asserted that Jakes' trial counsel had failed to investigate the crime scene adequately. If trial counsel had thoroughly investigated the crime scene, he would have realized that Jakes could not have seen Garcia dying on the street from his window because no window in the home Jakes shared with Jones had a view of the street. According to the supplement to the postconviction petition, the evidence of a false assertion in

the written statement Jakes signed would have supported Jakes' testimony at trial that he signed the false statement because Kill beat and threatened him while Boudreau watched.

¶ 18 The circuit court granted the State's motion to dismiss the postconviction petition and its supplement. The appellate court held that, in this case, with very closely balanced evidence, the petition and its supporting documents substantially showed that Jakes received ineffective assistance of trial counsel for failure to adequately investigate the crime scene and ineffective assistance of appellate counsel for failure to raise ineffective assistance of trial counsel on the direct appeal. *People v. Jakes*, No. 1-04-1388 (2006) (unpublished order under Supreme Court Rule 23). Accordingly, the appellate court reversed the dismissal of the postconviction petition and remanded the case for an evidentiary hearing. *Jakes*, No. 1-04-1388. The appellate court noted that Jakes and his postconviction counsel, through no fault of their own, had not produced evidence from other victims to support his claims of police brutality and perjury. The appellate court said, "since this case is being reversed and remanded, Jakes may amend his petition and address his police brutality claim on remand." *Jakes*, No. 1-04-1388, slip op. at 17-18.

¶ 19 On remand, Jakes filed a motion for discovery of evidence of past misconduct by Kill and Boudreau to impeach their testimony and support Jakes' claim regarding the statement he signed. The circuit court denied the motion for discovery. Instead, the court told counsel that if Jakes wished to pursue his misconduct claims against Kill and Boudreau, he needed to file a supplemental petition based on evidence he could present without discovery.

¶ 20 Counsel filed an amended postconviction petition to further support Jakes' claim, in the original postconviction petition, that Kill threatened him and Kill and Boudreau lied under oath about the way they obtained Jakes' signature on the statement the assistant State's Attorney wrote. Jakes alleged, with supporting documents, that Kill participated in the beating and intimidation of Alnoraindus Burton in 1989; Mark Craighead in 1989; Jason Gray in 1986; Harold Hill in 1992; Ronald Kitchen in 1988; Anthony Robinson in 1988; Johnny Walker in 1988; Phillip Walker in 1987; Demond Weston in 1990; Marcus Wiggins in 1991; Anthony Williams in 1992; and Eric Wilson in 1988. Jakes also alleged that Boudreau participated in the beating and intimidation of Arnold Day in 1992; Fred Ewing in 1993; Derrick Flewellen in 1995; Jerry Gillespie in 1993; Oscar Gomez in 1995; Harold Hill in 1992; Alfonzia Neal in 1991; John Plummer in 1992; Tyrone Reyna in 1993; Clayborn Smith in 1992; Darnell Stokes in 1993; Michael Taylor in 1994; Sean Tyler in 1994; Kilroy Watkins in 1992; Peter Williams in 1992; and Dan Young in 1992. The supporting documents included a few affidavits of the alleged victims, some complaints in lawsuits brought by the alleged victims, some decisions of appellate courts recounting the records in criminal cases brought against other alleged victims of Kill and Boudreau, and some transcripts of testimony in other lawsuits.

¶ 21 The State moved to dismiss all allegations of misconduct committed by Kill and Boudreau. The circuit court first dismissed as irrelevant all allegations of Boudreau's extensive history of misconduct, because Jakes testified only that Boudreau watched while Kill beat him and threatened him. Next, the court struck as too remote in time all allegations of Kill's misconduct before 1988, and all allegations supported by documents other than affidavits of the alleged victims. Even when the alleged victim testified about Kill's crimes, the circuit court refused to

accept the testimony as grounds for an evidentiary hearing on the allegations or for permitting further discovery about the allegations. The circuit court eliminated from its consideration evidence related to all of Kill's and Boudreau's alleged victims other than Burton and Kitchen. The court then held that those two examples could not make enough of a pattern to support Jakes' claim, and therefore the circuit court dismissed all of Jakes' claims related to the misconduct of Kill and Boudreau.

¶ 22 At the hearing on Jakes' claim that his trial counsel provided ineffective assistance, his trial counsel testified that he drove to the crime scene and looked around through his car window, but he felt no need to inspect the scene more closely. He did not try to determine whether Jakes could have seen the street from his home because he did not consider the assertion that Jakes saw Garcia dying on the street a significant part of the statement Jakes signed. The attorney also said that he did not like to call police officers liars, so he did not want to challenge the credibility of Kill and Boudreau.

¶ 23 The circuit court agreed with Jakes' trial counsel that the fact that Jakes could not have seen Garcia from his window constituted only an "inconsequential contradiction" that could not have persuaded the jury that Kill and Boudreau decided what should go into the statement to make it a credible confession, and that Jakes signed the false statement to stop the beatings and threats. The court denied the postconviction petition. Jakes now appeals.

¶ 24 ANALYSIS

5 Because the circuit court dismissed the allegations of police misconduct without holding an evidentiary hearing, we review the dismissal of those allegations *de novo*. *People v. Fair*, 193 Ill. 2d 256, 260 (2000). The circuit court has discretion to order discovery in postconviction proceedings. *Fair*, 193 Ill. 2d at 264. The circuit court should permit discovery if the moving party establishes good cause for the request. *Fair*, 193 Ill. 2d at 264-65. The court should consider "the totality of the relevant circumstances, including the issues presented in the petition, 'the scope of the discovery sought, the length of time between the conviction and the post-conviction proceeding, the burden [of granting discovery,] and the availability of the desired evidence through other sources.' " *People v. Smith*, 352 Ill. App. 3d 1095, 1113 (2004) (quoting *People ex rel. Daley v. Fitzgerald*, 123 Ill. 2d 175, 183-84 (1988)). The appellate court should reverse the circuit court's decision on a request for discovery in a postconviction proceeding only if the trial court abused its discretion. *Fair*, 193 Ill. 2d at 265.

¶ 26 The State argues that the trial court correctly denied the motion for discovery because at the time of the motion, the postconviction petition included no allegations of police misconduct. The State's argument rests on a mistake. The initial postconviction petition, filed years before the discovery motion, included several allegations of police misconduct, and the discovery counsel sought would lend support to those allegations. Counsel's decision not to repeat those allegations in his own submission to the court, labeled a supplement to the postconviction petition, does not remove the allegations from the petition. Before defense counsel requested discovery concerning police misconduct, the postconviction petition adequately alleged police misconduct.

¶ 27 Our supreme court addressed the issue of postconviction discovery in *Fair*, 193 Ill. 2d 256. In *Fair*, Judge Foxgrover presided at Fair's jury trial on a murder charge. The jury found Fair guilty. In a postconviction petition, Fair alleged that Foxgrover's corruption violated Fair's right to a fair trial. Foxgrover had pled guilty to 159 crimes, including theft, official misconduct, obstruction of justice and perjury. Fair sought discovery of evidence the State's Attorney's office gathered in its investigation into Foxgrover's corruption. In particular, Fair requested Foxgrover's confession and the interviews the State's Attorney's office conducted with witnesses to Foxgrover's crimes. The circuit court denied the request for discovery.

¶ 28 Our supreme court acknowledged that Fair's postconviction petition lacked specificity concerning Foxgrover's corruption and its effect on the case against Fair. *Fair*, 193 Ill. 2d at 266. The *Fair* court said:

> "The State argues that petitioner has not established good cause for his discovery request because nothing in the post-conviction petition suggests that a nexus exists [between Foxgrover's crimes and the trial of Fair]. The State's argument, however, puts petitioner in an impossible dilemma. According to the State, petitioner is entitled to seek out evidence that there is a nexus between Judge Foxgrover's criminal conduct and petitioner's trial only if he already possesses such evidence. The State also argues that allowing petitioner to conduct discovery will further delay the adjudication of this case. *** The finality of criminal convictions is a hollow achievement if the integrity of the judicial system which produces these convictions is open to question. Petitioner is entitled to an opportunity to find and present whatever evidence there may be which connects Judge Foxgrover's criminal conduct to his ability to be an impartial judge at petitioner's murder trial." *Fair*, 193 Ill. 2d at 266-67.

¶ 29 Jakes' petition included much more detail about the alleged official misconduct than the petition in *Fair*. Especially because the court found the allegations about most of the other alleged victims of Kill and Boudreau inadequately supported, irrelevant and insufficient to prove a pattern of coerced confessions and perjury, the detail included in the petition does not excuse the decision to deny discovery. The State's Attorney's office here, as in *Fair*, has much better access than the defense to evidence concerning the alleged official misconduct. The evidence of Kill's and Boudreau's misconduct in other cases can alter the relative credibility of Jakes, Jones, Kill and Boudreau in their testimony both at trial and at the hearing on the motion to suppress the statement Jakes signed. See *People v. Mitchell*, 2012 IL App (1st) 100907, ¶¶ 70-72. Following *Fair*, we find that the trial court abused its discretion when it denied Jakes' motion for discovery related to his postconviction petition.

¶ 30 On remand, the circuit court should permit discovery of materials including " 'not only what is admissible at the trial, but also that which leads to what is admissible.' " *People v. Kladis*, 2011 IL 110920, ¶ 26 (quoting *Krupp v. Chicago Transit Authority*, 8 Ill. 2d 37, 41 (1956)). The court should ensure that the parties use discovery to " 'enhance the truth-seeking process, to enable attorneys to better prepare for trial, to eliminate surprise and to promote an expeditious and final determination of controversies in accordance with the substantive rights of the parties.' " *Kladis*, 2011 IL 110920, ¶ 27 (quoting *D.C. v. S.A.*, 178 Ill. 2d 551, 561 (1997)). The court will need to determine whether the materials sought will help lead the

defense to find evidence that " 'tends to prove or disprove something in issue.' " *Kladis*, 2011 IL 110920, ¶ 27 (quoting *Bauter v. Reding*, 68 Ill. App. 3d 171, 175 (1979)).

¶ 31 Because the matters in issue involve alleged beatings and threats by Kill, the court should permit discovery of evidence that affects the credibility of the testimony of Kill and Boudreau about the means by which they persuaded Jakes to sign the statement the assistant State's Attorney wrote. Evidence of other cases in which Kill and Boudreau coerced confessions directly relates to the issues here. Evidence that Kill and Boudreau lied under oath in other proceedings, especially when those proceedings involved statements signed following interrogations by Kill or Boudreau, also should affect the credibility of their testimony here. See *People v. Patterson*, 192 Ill. 2d 93, 145 (2000). The court must permit sufficient discovery to establish a pattern or practice of coerced confessions and perjury, if Kill or Boudreau engaged in such practices. See *Patterson*, 192 Ill. 2d at 140. Kill himself, in a deposition, swore that he obtained confessions in 90% of the murder cases on which he worked, for a total of about 1,500 murder confessions in his career. He added that in 90% of those cases, defense attorneys filed motions to suppress "based on allegations of unnecessary use of physical force."

¶ 32 The State argues that the trial court correctly held evidence that Boudreau beat other suspects and coerced them into signing confessions has no relevance here, because Jakes swore only that Boudreau watched Kill beating Jakes, and Jakes did not say Boudreau hit him. The State ignores the added coercive power that a second police officer brings to an enclosed interview room simply by watching while another officer brutally beats a suspect and verbally threatens to do worse. The officer's silent acceptance of the crime committed by a fellow officer can help persuade their victim that no one associated with police will help him and he will face worse beatings if he tells a police officer, an assistant State's Attorney, or a doctor working for the State about the beatings. Moreover, Boudreau's testimony both at trial and on the motion to suppress puts his credibility in issue; and evidence that he committed perjury in other cases could significantly affect the credibility of his testimony here.

¶ 33 In light of our resolution of the discovery issue, we elect to wait to address the issue of whether the evidence presented at the evidentiary hearing requires reversal and remand for a new trial. We remand for discovery and a new evidentiary hearing.

¶ 34 CONCLUSION

¶ 35 Jakes' initial postconviction petition included allegations that Detectives Kill and Boudreau used beatings and threats to persuade Jakes to sign a false confession and then lied under oath about the beatings and threats. The allegations of official misconduct merited discovery of any evidence in the State's possession that could support Jakes' allegations. Jakes may amend his postconviction petition in light of the discovery of evidence of other misconduct by Kill and Boudreau. The State may respond to the amended petition. The evidence provided in discovery may require a new evidentiary hearing, at which Jakes could present evidence that Kill and Boudreau have beaten suspects, coerced confessions, and provided perjured testimony in other cases. This court will review the trial court's findings after the trial court has held an appropriate evidentiary hearing, for which defense counsel has

access to evidence bearing on the credibility of the testimony of Kill and Boudreau. Accordingly, we reverse the trial court's judgment and remand for further proceedings on the postconviction petition.

¶ 36 Reversed and remanded.

A PROJECT OF THE UNIVERSITY OF CALIFORNIA IRVINE NEWKIRK CENTER FOR SCIENCE & SOCIETY,
UNIVERSITY OF MICHIGAN LAW SCHOOL & MICHIGAN STATE UNIVERSITY COLLEGE OF LAW



# ANTHONY JAKES

Other Cook County Exonerations with Official Misconduct

Anthony Jakes (Photo: Stacey Westcott/Chicago Tribune)

On May 17, 1991, 16-year-old Jerrod Irving was shot twice in the head during an apparent robbery attempt by a rival gang member at his residence in the 900 block of west 54th Street on the South Side of Chicago.

The crime was still unsolved on September 15, 1991, when 48-year-old Rafael Garcia was fatally shot during an attempted robbery about a mile away on 51st Street near the corner of Racine Avenue.

On September 16—the next day—police said an anonymous caller reported that 15-year-old Anthony Jakes, who lived on 51st Street a few doors down from the shooting of Garcia, had information about the crime.

Jakes later said that police came into his home without a warrant and took him to a police station, where an officer planted drugs on him in the lockup. Jakes was then put into an interrogation room where, after Detective Michael Kill kicked and beat him, he signed a confession. In it, he admitted that he had acted as a lookout while another man—18-year-old **Arnold Day** —shot Garcia during an attempted holdup.

Jakes was charged with felony murder and attempted armed robbery.

Despite that statement, police did not arrest Day until February 4, 1992. Police said that he also confessed—not only to the murder of Garcia, but to the murder of Irving.

The Garcia murder case was prosecuted first. Jakes and Day filed motions to suppress their confessions, claiming they falsely confessed after Detective Kill and Detective Kenneth Boudreau physically abused them.

The detectives testified that after they took Jakes into the station, he was searched and they found a package of drugs in his pocket. They charged him with possession of drugs, and then Detectives Kill and Boudreau spoke with him. The detectives said Jakes gave them the names of three girls he was with the evening before.

They testified that the girls denied seeing Jakes. In addition, the detectives said a witness, Gus Robinson, who was in custody in an unrelated charge, reported that just before the shooting, Jakes approached him on the street and asked if he wanted to be a lookout for a planned robbery.

When confronted with that evidence, they said, Jakes admitted that he was the lookout for Day in the shooting of Garcia. In the confession, Jakes said that after the shooting, he ran home and looked out the second story window to see Garcia's body on the ground. Both detectives denied physically harming Jakes.

| | |
|---|---|
| **State:** | Illinois |
| **County:** | Cook |
| **Most Serious Crime:** | Murder |
| **Additional Convictions:** | Attempt, Violent |
| **Reported Crime Date:** | 1991 |
| **Convicted:** | 1993 |
| **Exonerated:** | 2018 |
| **Sentence:** | 40 years |
| **Race:** | Black |
| **Sex:** | Male |
| **Age at the date of reported crime:** | 15 |
| **Contributing Factors:** | False Confession, Perjury or False Accusation, Official Misconduct, Inadequate Legal Defense |
| **Did DNA evidence contribute to the exoneration?:** | No |

Jakes testified that Kill knocked him to the floor and kicked him in the chest until he finally agreed to confess. His statement was not given until about 4 a.m.—16 hours after he was taken from his home. It was not until then that a juvenile officer, whose presence was required during the interrogation of a juvenile, was actually summoned to speak to Jakes.

Jakes said he gave his statement only because Kill threatened to "give me more of what I just had." The defense presented photographs that were taken during Jakes's initial appearance that showed bruises on his body.

In rebuttal, Detective Boudreau testified that other police officers reported that Jakes had been in a fight with neighborhood youths prior to the shooting.

A physician who examined Jakes the day he confessed testified for the prosecution that his examination showed an older injury to Jakes's back, but no fresh injuries.

The motion to suppress the confession was denied. The judge ruled that the search that allegedly turned up drugs was unlawful and that the failure to call a juvenile officer was "an item to be put on the defendant's side of the ledger." However, because the defense had failed to prove his injuries were suffered while at the police station, the judge found that the confession was voluntary.

Jakes and Day went to trial simultaneously but with separate juries in September 1993. Robinson testified that at 6 p.m. on the night of the shooting, he took his 18-month-old to play on the swings at Sherman Park. He was still there at 11:45 p.m., when he received a notification on his pager. He said he drove to Oliver's Chicken Shack on the corner of Racine Avenue and 51st Street to use a pay phone.

While he was standing at the phone, Robinson said, Jakes approached and asked if he would "stand point" and watch for police while "he and Little A (Day) and them was robbing this white guy." Robinson said he looked through the window of a submarine sandwich shop next door, saw a man at the counter, and told Jakes he "wasn't with it." Robinson said he drove away and, after stopping a few blocks away to talk to friends, heard gunshots. Robinson identified a photograph of Garcia as the man he saw at the counter.

The prosecution presented Day's and Jakes's confessions and testimony from Boudreau and Kill, both of whom denied physically abusing either Day or Jakes.

Day presented evidence that he was elsewhere at the time of the crime. The defense presented no evidence on Jakes's behalf.

On September 10, 1993, Day was acquitted by his jury. Jakes was convicted of felony murder and attempted armed robbery. He was sentenced to 40 years in prison.

Prior to Day's trial on charges of murder and attempted robbery of Irving, his defense attorney filed a motion seeking to bar use of his confession. Day testified that when he was arrested, Officer Judd Evans kicked him in the head and threatened to "blow my brains out."

Day testified that he was handcuffed and taken to the police station at 51st Street and Wentworth Avenue, where he was put into an interrogation room. There, he said, he was punched, kicked, and slammed against the wall repeatedly during interrogations by Detectives Boudreau, William Foley, and John Halloran. At one point, Foley threatened to throw him out a second floor window.

Day testified that he confessed based on details fed to him by the detectives.

Boudreau testified and denied that Day was mistreated or was fed details of the crime. The judge denied the motion to suppress the confession. In June 1994, Day went to trial for the murder and attempted armed robbery of Irving, who was found shot twice in the head in the hallway of a building.

During opening statements to the jury, the prosecution said that Ralph Watson would testify that Day had admitted to him that he committed the murder. However, Watson was ultimately not called to testify because he had recanted his statement implicating Day.

Watson told the prosecution that he was in Cook County Jail facing armed robbery charges when Boudreau arranged for him to be brought

to the police station. Watson said Boudr[illegible] threatened to charge him with more crimes unless he implicated Day. Watson refused to testify because he said Day had never admitted anything to him.

A defense motion for mistrial based on the prosecution's reference to Watson's statement was denied.

A police evidence technician testified that two shell casings and an expended bullet were found near Irving's body.

The primary evidence against Day was his confession. Detective Boudreau testified that Day initially denied committing the crime, but after being shown the statement from Watson, he admitted his involvement. Boudreau said Day admitted he shot Irving with a TEC-9 after Irving resisted a robbery attempt. He said he was accompanied by another man named "Nate." According to the confession, Day and Nate were members of the Blackstones street gang, and they went to a house where members of an opposing gang lived. The confession said that as they approached the house, they heard gunshots. Day fired back and killed Irving.

Day's attorney tried to present evidence that about a month after the shooting, police recovered a gun from a man that was linked by ballistics testing to the shell casings recovered near Irving's body. The man had not been charged in Irving's murder. The judge declined to allow the evidence even though the gun that was matched to the murder was a Smith & Wesson semi-automatic pistol. It was not a Tec-9, which Day's confession said he used to shoot Irving.

Day testified and denied involvement in the crime. He said that Foley had choked and struck him, shoved him against a wall, and threatened to throw him out the window.

The prosecution called Officer Evans and Detective Foley in rebuttal. They denied mistreating Day in any way.

On June 23, 1994, the jury convicted Day of first-degree murder and attempted armed robbery. He was sentenced to 60 years in prison.

The Illinois Appellate Court upheld the convictions in 1996. A post-conviction motion for a new trial was filed in 1997, but it was dismissed and an appeal was unsuccessful.

Jakes's conviction was upheld by the Illinois Appellate Court in 1995 and the Illinois Supreme Court denied him leave to appeal in January 1996. Acting without a lawyer, Jakes filed a post-conviction petition in February 1996 claiming that his trial defense lawyer had failed to investigate the case, that Detective Kill had kicked, beaten, and threatened to kill him, and that police had failed to call a juvenile officer.

The Cook County Public Defender's office was appointed to represent him on the petition in May 1996. Two months later, in July, the prosecution filed motion to dismiss the petition.

Nearly seven years later, in January 2003, an assistant public defender was finally assigned to handle the petition. In 2004, a supplemental petition was filed, claiming that his trial defense lawyer had failed to call alibi witnesses who could have testified that Jakes was not at the shooting.

The petition also cited the defense lawyer's failure to determine that it was impossible to see the street where Garcia was shot from the window of Jakes's home—as his confession stated—because his home faced the alley, not the street. The petition cited this evidence as proof that the confession was false.

The prosecution's motion to dismiss was granted. Jakes appealed, and in 2006, the Illinois Appellate Court remanded the case for an evidentiary hearing to allow the defense to develop evidence supporting Jakes's claim that his confession was the product of physical abuse.

However, the trial court judge denied a defense motion to require the prosecution to produce evidence of past misconduct by Detectives Kill and Boudreau. As a result, the defense ultimately filed another petition based on information uncovered in its own investigation, as well as information published by the Chicago Tribune in an article detailing false confessions obtained by Boudreau.

The amended petition cited allegations of physical abuse and coerced confessions in 13 cases involving Kill and 16 cases involving Boudreau, both of whom worked under the command of Lt. Jon Burge.

The trial court dismissed all the allegations involving Boudreau since Jakes said that only Kill beat him and that Boudreau merely watched. The court also refused to consider all claims against Kill before 1988 as too remote in time to the 1991 confession, and eventually reduced the number of relevant allegations against Kill to just two prior cases. The judge denied relief, finding that two cases were not sufficient to show a pattern of misconduct to support Jakes's claim.

In 2010, Burge was convicted in federal court of perjury for denying torture allegations during questioning in federal lawsuits brought by other torture victims. He was sentenced to 4½ years in prison.

As part of the re-examination of the torture allegations, the Illinois Torture Inquiry and Relief Commission was established to investigate claims of police torture. Defendants with credible claims could qualify for awards of up to $100,000 as well as other benefits.

Jakes, by then represented by lawyers at The Exoneration Project at the University of Chicago Law School, appealed the dismissal of his post-conviction petition. In 2013, the Illinois Appellate Court again reversed the trial court and remanded the case for further hearings. Jakes was out of prison by then—he was released on parole on June 21, 2012.

The appellate court ruled that Jakes's lawyers were entitled to any information that the prosecution had about both detectives. The court noted that Kill had testified under oath in a different case that he had gotten confessions in about 90 percent of the murders he investigated, and that he had been accused of physically beating suspects in virtually all of those cases.

The court also said the prosecution was required to produce evidence relating to Boudreau. "The officer's silent acceptance of the crime committed by a fellow officer can help persuade their victim that no one associated with police will help him and he will face worse beatings if he tells a police officer, an assistant State's Attorney, or a doctor working for the state about the beatings," the court said. "Moreover, Boudreau's testimony both at trial and on the motion to suppress puts his credibility in issue and evidence that he committed perjury in other cases could significantly affect the credibility of his testimony here."

By that time, the Illinois Torture Inquiry and Relief Commission had found credible evidence that Kill had physically abused Jakes. Day also had filed a claim with the Torture Commission.

Ultimately, Detective Kill took the witness stand at an evidentiary hearing before Cook County Circuit Court Judge William Hooks in January 2016. By that time, records showed that Kill had been accused of abusing suspects in 19 different cases, including the use of electric shocks. Records showed that Kill had worked for a time under the command of Lt. Jon Burge, the detective who was fired from the Chicago Police Department and later sent to prison for perjury relating the systematic torture of scores of men during interrogations. Officers under Burge's supervision employed various methods of torturing suspects, including electric shocks, putting guns in their mouths, staging mock executions, and tying a suspect to a radiator.

During questioning by Jakes's attorney, Russell Ainsworth, Detective Kill defended his use of a racial slur and insulted Jakes, his family, and their home so frequently that Judge Hooks ultimately reprimanded him.

In 2017, the Torture Commission found that Day's allegations of torture during interrogation were credible.

"Although Detectives Boudreau and Foley have denied that the incidents Day described ever occurred... there is pattern and practice evidence suggesting that both officers may have engaged in abusive conduct during police interrogations," the Commission concluded. "Moreover, given that a jury acquitted Day of the murder of Raphael Garcia, despite a signed confession to that crime, it is reasonable to conclude that the jury did not credit testimony by the officers contradicting Day's alleged mistreatment."

The Commission noted that for two decades Day had consistently maintained his innocence and that he was physically beaten.

Subsequently, attorney Steven Greenberg filed a petition for post-conviction relief for Day. The petition cited nearly 50 cases, primarily murders and other violent crimes, in which Boudreau, Foley, Kill, Halloran, and other detectives working with them were accused of beating and torturing defendants during interrogations, and similarly physically abusing witnesses to falsely implicate defendants.

The petition also cited a sworn statement from Krona Taylor, who lived in the building where Irving was murdered. Taylor said police, including Boudreau, interrogated her for 16 hours after she said she saw two people come toward the building and then heard gunshots. Ultimately, she gave police a number of names, including Day's, who she had seen in the neighborhood. She told police that the two people who approached the building were a male and a female. Her description of the male did not fit the description of Day.

In the statement, Taylor said that Day, whom she knew, was not the male. Day's defense attorney did not interview Taylor prior to Day's trial, according to the petition.

Greenberg noted that the gun that police said was linked by ballistics to the shooting was a Smith & Wesson—not a TEC-9, which was the gun that Boudreau said Day confessed he used to shoot Irving.

On April 30, 2018, Robert Milan, who had been appointed as a special prosecutor to handle the cases of Jakes and Day, asked that Jakes's convictions be vacated and then dismissed the case.

On December 17, 2018, Milan asked that Day's convictions in the Irving murder case be vacated. The motion was granted. Milan then dismissed the case and Day was released.

In 2019, Jakes filed a federal civil rights lawsuit against the city of Chicago seeking damages for his wrongful conviction.

– *Maurice Possley*

---

**Report an error or add more information about this case.**

---

Posting Date: 5/16/2018
Last Updated: 4/2/2019

---

## ABOUT THE REGISTRY

The National Registry of Exonerations is a project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School and Michigan State University College of Law. It was founded in 2012 in conjunction with the Center on Wrongful Convictions at Northwestern University School of Law. The Registry provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. The Registry also maintains a more limited database of known exonerations prior to 1989.

## CONTACT US

We welcome new information from any source about exonerations already on our list and about cases not in the Registry that might be exonerations.

Tell us about an exoneration that we may have missed

Correct an error or add information about an exoneration on our list

Other information about the Registry

Sign up for our Newsletter

Follow Us:

*APRIL 24, 2007*

A REPORT ON

# THE FAILURE OF

# SPECIAL PROSECUTORS

# EDWARD J. EGAN

# AND

# ROBERT D. BOYLE

# TO FAIRLY INVESTIGATE

# POLICE TORTURE IN CHICAGO

# REPORT ON THE FAILURE OF SPECIAL PROSECUTORS EDWARD J. EGAN AND ROBERT D. BOYLE TO FAIRLY INVESTIGATE SYSTEMIC POLICE TORTURE IN CHICAGO

*[Burge] put some handcuffs on my ankles, then he took one wire and put it on my ankles, he took the other wire and put it behind my back, on the handcuffs behind my back. Then after that, when he — then he went and got a plastic bag, put it over my head, and he told me, don't bite through it. I thought, man, you ain't fixing to put this on my head, so I bit through it. So he went and got another bag and put it on my head and he twisted it. When he twisted it, it cut my air off and I started shaking, but I'm still breathing because I'm still trying to suck it in where I could bite this one, but I couldn't because the other bag was there and kept me from biting through it. So then he hit me with the voltage. When he hit me with the voltage, that's when I started gritting, crying, hollering . . . It feel like a thousand needles going through my body. And then after that, it just feel like, you know — it feel like something just burning me from the inside, and, um, I shook, I gritted, I hollered, then I passed out.*

*Torture victim Anthony Holmes*
*Statement Provided to Special Prosecutors*

## INTRODUCTION

On April 24, 2002, Paul Biebel, the Presiding Judge of the Criminal Division of the Cook County Circuit Court, ruled that State's Attorney Richard A. Devine had an actual conflict of interest in investigating police torture allegations because he and a law firm with which he had been associated had defended Jon Burge in a civil rights lawsuit brought by torture victim Andrew Wilson. Judge Biebel appointed Edward J. Egan as Special State's Attorney and Robert D. Boyle as Chief Deputy Special State's Attorney (hereinafter Special Prosecutors) to investigate the torture allegations. (*In Re Special Prosecutor*, 2001 Misc. 4, Order and Opinion of Judge Biebel, April 24, 2002). After a four-year investigation that cost Cook County taxpayers $7 million, the Special Prosecutors sought no indictments but rather on July 19, 2006, filed a 292-page Report of the Special State's Attorney (hereinafter Special Prosecutors' Report, or Report).

After the Report was released, there was a widespread perception, particularly in the African-American community, that the Report was unfair, misleading, and disingenuous, and that the Special Prosecutors should have brought criminal charges against the alleged torturers. As a result of the dissatisfaction, a team of volunteer attorneys, researchers, and community activists was formed to respond to the Report. The team devoted the next nine months to that effort, resulting in this report, which has been endorsed by 212 individuals and organizations active in the fields of human rights, criminal justice, civil rights, and racial justice.[1]

## SUMMARY OF FINDINGS.

The research team concluded that the Special Prosecutors:

- Did not bring criminal charges against members of the Chicago Police Department despite the apparent existence of numerous provable offenses within the statute of limitations.
- Ignored the failure of former Cook County State's Attorney Richard M. Daley, State's Attorney Richard A. Devine, and various other high-ranking officials to investigate and prosecute police officers who engaged in a documented pattern of torture and wrongful prosecution of torture victims.
- Did not document the systemic and racist nature of the torture and did not brand it as such in accordance with the international definition of torture.[2]

---

[1] The names of endorsing organizations and individuals appear at the end of the report. Those whose names are followed by asterisks participated in researching, writing, editing, and producing this report. The team had access to the entire public record of the torture scandal. Most documents cited herein are posted at http://humanrights.uchicago.edu/chicagotorture/.

[2] The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

- Unfairly evaluated the credibility of the alleged torturers and of their victims and unfairly attempted to discredit torture victims who had pending civil or criminal cases.

- Conducted an investigation that was hopelessly flawed and calculated to obfuscate the truth about the torture scandal.

- Ignored a wealth of evidence establishing that there was a widespread and continuing cover-up of the torture scandal — a conspiracy of silence — implicating high officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office.

- Failed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal.

- Had appearances of conflict of interest and bias in favor of those whom they had been appointed to investigate.

## B ACKGROUND

To understand what the undersigned believe to be the inadequacies and failures of the Special Prosecutors' investigation and Report, it is essential first to understand the Special Prosecutors' principal findings, which were:

- That the evidence established beyond a reasonable doubt that "Jon Burge and at least one other officer [John Yucaitis] committed armed violence, intimidation, official misconduct, and aggravated battery when they abused Andrew Wilson at Area 2 on February 14, 1982, and committed perjury when they testified at Wilson's first trial on November 9, 1982."[3] (Special Prosecutors' Report, p. 16)

- That the evidence established beyond a reasonable doubt that Area 2 Detectives Anthony Maslanka and Michael McDermott physically abused Alphonso Pinex and committed aggravated battery, perjury, and obstruction of justice. (Id.)

---

[3] The evidence indicated that Wilson was shocked with a black electric shock box on his ears, lips, and genitals, suffocated with a plastic bag, beaten about his head and body, burned on a hot radiator to which he was handcuffed and burned with cigarette butts.

- That the evidence established beyond a reasonable doubt that Area 2 Detectives James Lotito and Ronald Boffo abused Philip Adkins and committed aggravated battery against him.[4] (Id.)

- That there were "many other cases" in which the Special Prosecutors "believed" that the persons (including Melvin Jones, Shaded Mumin, and Michael Johnson[5]) were abused but "proof beyond a reasonable doubt [was] absent." (Id.)

- That Burge, the commander of the Violent Crimes Section of Detective Areas 2 and 3, was "guilty [of] abus[ing] persons with impunity," and that it therefore "necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they." (Id.)

- That Police Superintendent Richard J. Brzeczek was guilty of a "dereliction of duty" and "did not act in good faith in the investigation of Andrew Wilson," because Brzeczek "believed at the time that officers at Area 2 had tortured Andrew Wilson," and that Brzeczek "kept Burge in command at Area 2, and issued a letter of commendation to all of the detectives at Area 2." (Id. at 17)

- That Brzeczek "received and believed evidence that a prisoner [Andrew Wilson] had been brutalized by the Superintendent's subordinates, that the prisoner had confessed, that those subordinates had testified under oath on a motion to suppress and before a jury and he [Brzeczek] had to believe, they testified perjuriously, *that the prisoner had been sentenced to death,* and that for 20 years the Superintendent still remained silent." (Id. at 86-87) (*emphasis in original*)

- That the U.S. Court of Appeals for the Seventh Circuit in its 1993 consideration of the City's liability in the Wilson civil case was misled concerning Superintendent Brzeczek's contemporaneous knowledge that Burge and his subordinates tortured Wilson because Brzeczek concealed those views until after the case was concluded. (Id. at 87-88)

- That the Chief of Felony Review of the Cook County States Attorneys' Office, Lawrence Hyman, gave "false testimony" when "he denied that Andrew Wilson told him he had been tortured by detectives under the command of Jon Burge." (Id. at 54)

---

[4] The evidence indicated that Adkins was beaten about his head and body with a flashlight, causing him to defecate on himself, and called racial epithets.

[5] The evidence indicated that Burge electrically shocked Jones on his penis, thigh and foot, struck him in the head with a stapler, threatened him with a revolver, and threatened to "blow [his] black brains out;" that Burge suffocated Mumin with a plastic typewriter cover, threatened him with a revolver, subjected him to Russian Roulette, and repeatedly used racial epithets; and that Burge electrically shocked and beat Johnson.

- That no meaningful police investigation was conducted, nor any police witness questioned either in the Wilson case, or in the Michael Johnson electric-shock case, which occurred a few months after Wilson, and had "glaring similarities" to the Wilson allegations. (Id. at 71-73; 88)

- That "something should have been done about the disgrace and embarrassment [at Area 2] 24 years ago" by the Chicago Police Superintendent. (Id. at 89)

- That if action had been taken against Jon Burge at the time of the Andrew Wilson case, or even shortly thereafter, the appointment of the Special Prosecutors would not have been necessary. (Id. at 88)

- That this action should have included, "at the very least," the Superintendent's removal of Burge from any investigative command and a "complete shake-up at detective Area 2." (Id. at 88)

At a press conference after release of the Report, the Special Prosecutors stated that, of the 148 cases they investigated, they believed that abuse occurred in 74, or approximately half of the cases, and that the torture allegations "seemed to center on a crew known as the Midnight Crew." "There are a number of officers who seem to predominate relative to the number of allegations that are made, allegations that we have said that we think happened," said Boyle. "It centers basically around eight to twelve policemen out of a unit of forty-four." (Transcript of the Press Conference of the Special Prosecutors, July 19, 2006)

Despite the findings presented in the Report and the statements at the press conference, the Special Prosecutors sought no indictments, concluding that "the statute of limitations bars any prosecution of any officers." (Special Prosecutors' Report, p. 13)

## INDICTABLE CASES WHICH THE SPECIAL PROSECUTORS COULD HAVE BROUGHT WITHIN THE STATUTE OF LIMITATIONS

*The Special Prosecutors did not bring criminal charges against members of the Chicago Police Department despite the apparent existence of numerous provable offenses within the statute of limitations.*

The Special Prosecutors' Report stated that neither Burge nor any of his subordinates could be indicted because the three-year Illinois statute of limitations had run on all their alleged crimes. This assertion was and is unsupported and unsupportable by the record. In truth, shortly after their appointment, the Special Prosecutors were presented with evidence of indictable offenses within the statute of limitations. Furthermore, during the four-year Special Prosecutors' investigation, numerous additional indictable offenses occurred, including perjury, obstruction of justice, official misconduct, and conspiracy.

Officers who could have been indicted within the statute of limitations, and the offenses for which they could have been indicted, if the Special Prosecutors had proceeded in a timely fashion, include:

**Jon Burge**— The Special Prosecutors found, beyond a reasonable doubt, that Burge tortured Andrew Wilson, and, when he denied doing so at Wilson's 1982 trial, committed perjury and obstructed justice. Furthermore, during the Wilson federal court proceedings, Burge denied under oath, once in 1988 and twice in 1989, that he had tortured Wilson. At a Police Board hearing in 1992, he again denied torturing Wilson. Non-conspiracy charges based on those false denials may have been barred by the three-year statute of limitations. However, in November 2003, during the *Hobley v. Burge* federal court case, Burge once more denied under oath that he had witnessed or participated in any torture or abuse of suspects during his tenure in the Police Department. Therefore, Burge could have been indicted for perjury and obstruction of justice for his 2003 sworn statement, as these denials were in the face of numerous credible cases of torture.

**John Byrne** — John Byrne, a disbarred lawyer,[6] was the sergeant in charge of the midnight shift at Area 2 and by his own admission Burge's "right hand man" from 1982 to 1986. On March 1, 2001, in a sworn deposition taken in a state court post-conviction case brought on behalf of torture victim Aaron Patterson, Byrne denied torturing, abusing or witnessing the torture or abuse of any of more than ten individuals. Many of the torture claims in these cases have been validated in court and by administrative bodies, including the cases of Gregory Banks, David Bates, Darrell Cannon, Stanley Howard, Lee Holmes, Philip Adkins, Marcus Wiggins, Aaron Patterson, and Thomas Craft. Byrne's sworn denials occurred well within the three-year statute of limitations, and could have been the basis for a series of perjury[7] and obstruction of justice[8] charges. In early 2004, Egan and Boyle were warned that the statute would soon expire on these alleged offenses. Nonetheless, they neither sought an indictment of Byrne nor sought a statute of limitations waiver from him before the March 2004 deadline. In August 2004, the Special Prosecutors had another opportunity to indict Byrne when he gave them an oral statement that he had not participated in or witnessed any acts of torture, (including the Banks and Cannon cases) took the Fifth Amendment before the Grand Jury the same day, then offered, the next day, to give the Special Prosecutors a formal, unsworn, court reported statement denying all torture at Area 2. (Deposition of John Byrne in *Cannon v. Burge,* December 14, 2006, and exhibits thereto) At his 2006 deposition, Byrne admitted that he refused to give denials under oath because he feared being charged with perjury. Furthermore, he conceded that his unsworn denials could expose him to obstruction of justice charges, but that he felt such an eventuality was highly unlikely. Byrne's legal maneuver supplied the Special Prosecutors with wholesale denials of torture on behalf of Burge and the other 25 detectives who refused to cooperate with the Special Prosecutors' investigation, yet the Special Prosecutors neither took a formal court-reported statement from Byrne nor indicted him for obstruction of justice.

---

[6] On November 26, 1996, Byrne, who had become a lawyer while serving as a detective, was disbarred as an attorney in Illinois. This disbarment was based on eleven separate counts of attorney misconduct. The ARDC found that Byrne had engaged in actions that "defeated the administration of justice and brought the legal system into disrepute" on seven occasions; that he "committed dishonesty, fraud, deceit or misrepresentation" on four occasions; and that he "made statements of material fact or law to a tribunal which he knew or reasonably should have known were false" on one occasion. (Deposition of John Byrne in *People v. Patterson*, March 1, 2001) At his deposition, Byrne admitted to the allegations in each of the 11 Counts brought by the ARDC. (Id.)

[7] In Illinois, "a person commits perjury when, under oath or affirmation, in a proceeding in any other matter where by law such oath or affirmation is required, he makes a false statement, material to the issue or point in question, which he does not believe to be true." (720 ILCS 5/32-2(a))

[8] In Illinois, "a person obstructs justice when, with the intent to prevent the apprehension or obstruct the prosecution or defense of any person he knowingly commits any of the following acts: (a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, *furnishes false information*, or (b) Induces a witness having knowledge material to the subject at issue to leave the State or conceal himself; or (c) Possessing knowledge material to the subject at issue, he leaves the State or conceals himself. ." (720 ILCS 5/31-4) *(emphasis added)*

**James Lotito** — The Special Prosecutors found that James Lotito, a member of the midnight shift, and Ronald Boffo had severely beaten Philip Adkins. However, in November 2003 in sworn interrogatories in the *Hobley* case, Lotito denied, under oath, that he had participated in or witnessed *any* acts of torture and abuse. As a result, Lotito could have been indicted for perjury and obstruction of justice for his denials in either the Adkins case or for several other cases of torture, including Stanley Howard and Madison Hobley.

**Daniel McWeeny** — Daniel McWeeny was named as a participant — often "the statement taker" — in a number of torture and abuse cases, including those of Melvin Jones, Stanley Howard, Aaron Patterson, Darrell Cannon, Madison Hobley, James Andrews, L.C. Riley, and Leroy Orange. In November 2003, during the Special Prosecutors' investigation of the Hobley case, McWeeny denied under oath that he had participated in or witnessed *any* acts of torture and abuse. Furthermore, torture witness David Bates has subsequently alleged that in September 2004, McWeeny intimidated him at his home after he appeared as a witness at Cannon's parole revocation hearing. In November 2005, McWeeny was granted use immunity by the Special Prosecutors, then appeared before the Special Grand Jury and denied any wrongdoing. In April and June 2006, on four separate occasions in two federal court torture cases, McWeeny denied, twice while under oath, that he saw or participated in *any* acts of torture or abuse. Hence, McWeeny could have been indicted for perjury for all of these acts and for obstruction of justice for all of them except his testimony before the Special Grand Jury.

**John Paladino** — John Paladino, was another Area 2 midnight shift detective who, along with his partner, Anthony Maslanka, was named in numerous cases of torture, including the Hobley, Mumin and Cody cases. Paladino was also named by thirteen-year-old torture victim Marcus Wiggins, who alleged that he was electric-shocked in September 1991. In 1996, in sworn federal court testimony, Paladino denied participating in or witnessing *any* torture at Areas 2 and 3. In November 2003, in the Hobley case, Paladino denied under oath in sworn interrogatories that he had participated in or witnessed *any* acts of torture and abuse. Hence, Paladino could have been indicted for perjury and obstruction of justice for his 2003 sworn denials.

**Fred Hill and Patrick Garrity** — Fred Hill was a long time Area 2 detective who was named as a torturer and witness in the Donald White and Andrew Wilson cases. In sworn federal court testimony given in June 2006 in the *Evans v. City of Chicago* case, Hill denied knowledge of, or participation in, *any* acts of torture or abuse. Hence, he could have been indicted for these sworn denials. In late 2005, after the Special Prosecutors granted him immunity, Patrick Garrity, according to his lawyer, also denied *any* wrongdoing before the grand jury; as a result, he could have been indicted for perjury.[9]

[9] There are also at least eight additional Area 2 officers and supervisors who could have been charged with obstruction of justice and perjury within the 3 year statute of limitations for denying any knowledge of torture and abuse.

**Conspiracy to obstruct justice**

The evidence clearly supports the conclusion that the Area 2 supervisors and detectives named above committed numerous acts of obstruction of justice within the statute of limitations. The Special Prosecutors — by their own admission — believed that these and other Area 2 officers committed more than 70 separate acts of torture as well as numerous testimonial acts of obstruction of justice, perjury, and cover-up which were outside of the three year statute. At the very least, the Special Prosecutors also could have indicted these officers for conspiracy to obstruct justice for committing, with a shared intent and motive, the acts committed within the statute. Moreover, it would also have been reasonable for the Special Prosecutors to have defined the conspiracy more broadly, and used some or all of the earlier evidence of torture and cover-up as part of the proof of the ongoing obstruction of justice conspiracy which continues today.[10]

## FAILURE TO HOLD DALEY, DEVINE, AND OTHER OFFICIALS ACCOUNTABLE FOR THEIR ROLES IN THE TORTURE SCANDAL

*The Special Prosecutors ignored the failure of former Cook County State's Attorney Richard M. Daley, State's Attorney Richard A. Devine, and various other high-ranking officials to investigate and prosecute police officers who engaged in a documented pattern of torture and wrongful prosecution of torture victims.*

The Special Prosecutors largely ignored or obfuscated the roles in the torture scandal of various high-level officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office. Among officials who knew that prisoners were being tortured by Burge and his subordinates, and who had the power and duty to intervene to stop the torture,

---

[10] Since the Special Prosecutors issued their Report, approximately 15 former Area 2 supervisors and detectives, including Byrne, Dignan, McWeeny, and Paladino, have given additional, detailed, sworn federal court testimony denying any involvement or knowledge of torture. These denials are clearly within the five year Federal statute of limitations for the offenses of obstruction of justice, perjury, conspiracy, and racketeering. A comprehensive list of these potential criminal acts, from 1979 to the present, can be found in Appendix A.

were Richard M. Daley, both in his capacity as State's Attorney until 1989 and as Mayor since then; Richard A. Devine, the First Assistant State's Attorney under Daley and presently the State's Attorney; and Jane M. Byrne, who was Mayor when the torture allegations surfaced.

Within weeks of their appointment, the Special Prosecutors were notified that Richard Brzeczek, the Superintendent of Police in 1982 when Andrew Wilson was tortured at Area 2, had stated that he was certain that there had been torture at Area 2 under Burge. (*Chicago Tonight*, WTTW TV 11, April 30, 2002)

Brzeczek subsequently told the Special Prosecutors that in 1982 — after Dr. John Raba, the director of Cermak Medical Services, notified him by letter that Wilson claimed to have been tortured at Area 2 and that Wilson's allegation was corroborated by photographs and medical evidence — he wrote to State's Attorney Daley, notifying him of the allegation and enclosing a copy of Dr. Raba's letter. Brzeczek's letter to Daley stated that he was deferring investigation of Wilson's allegations until or unless the State's Attorney's Office authorized him to proceed. (Id.) Brzeczek also informed the Special Prosecutors that he believed that he had informed Mayor Byrne of the torture evidence sent to him by Dr. Raba. (Id.)

Instead of capitalizing on a *cooperative* Brzeczek and his knowledge of the evidence supporting Wilson's allegations and investigating the roles that Daley, Devine, Byrne, and other officials played in the ensuing cover-up of the on-going torture, the Special Prosecutors attempted to discredit both Brzeczek and his story. The Special Prosecutors repeatedly questioned Brzeczek under oath, and brought him before the Special Grand Jury, where, despite appearing voluntarily and without immunity, he was aggressively interrogated by both Egan and Boyle. (Statement of Richard Brzeczek, March 9, 2005; Grand Jury Testimony of Richard Brzeczek, October 5, 2005)

In contrast, there is not a single written memo, statement, or transcript documenting any formal or informal questioning of Daley, Devine, Byrne, or of any of their high ranking subordinates, until after the Special Prosecutors announced in early 2006 that their investigation was wrapping up and their Report would soon be issued. Then, apparently as an after thought, the Special Prosecutors conducted brief, informal interviews with Daley, Devine, and Byrne. In these interviews, which were not transcribed by the Special Prosecutors, Daley and Devine acknowledged that they had seen the Brzeczek letter. Byrne denied that Brzeczek had ever told her about Dr. Raba's letter. She did admit that she had met with Burge three times while he was leading a manhunt for the men who killed Police Officers William Fahey and Richard O'Brien on February 9, 1982 — the crime in connection with which Andrew Wilson was tortured. The manhunt, she added, was pursuant to her plan for "direct action." (Special Prosecutors' Memoranda dated January 6, January 16, and February 2, 2006)

In April 2006, the Special Prosecutors publicly stated that there would be no indictments and that the Report was essentially complete. The release of the Report, however, was delayed because attorneys for Burge and his subordinates appeared before Judge Biebel and opposed its release. In May, the media began to question why there would be no indictments. Lawyers for the victims responded that the responsibility fell on Daley and Devine because they *should have* indicted Burge for Wilson's torture 24 years earlier. At this point, Brzeczek predicted in widely reported interviews that the Special Prosecutors would scapegoat him in order to absolve Daley and Devine.

Apparently to defend against Brzeczek's charge, Egan and Boyle launched a last minute "investigation" of Daley and Devine's role in the Wilson case. The Special Prosecutors began by taking a sworn statement from former First Deputy State's Attorney William Kunkle, who

had been next in command to Daley and Devine when Wilson was tortured. In his statement, Kunkle revealed several communications with Daley and Devine concerning the Brzeczek letter and its contents, and acknowledged that they all knew that the facts in the letter established criminal conduct. (Statement of William Kunkle, May 10, 2006) In his statement, Kunkle also removed himself from the chain of responsibility for refusing to investigate and prosecute Burge, instead passing it on to Daley, Devine, and the Special Prosecutions Unit of the State's Attorneys' Office (Id.) Confronted with this apparently unanticipated turn of events, Egan and Boyle attacked and attempted to discredit Kunkle (Special Prosecutors' Report, pp. 126-30)

In June 2006, in response to Kunkle's claims, the Special Prosecutors took sworn statements from Daley and Devine. In his statement, Daley backed off his prior *informal* concession that he most likely received the Brzeczek letter, while Devine conceded the knowledge that Kunkle attributed to him and Daley, thereby corroborating their central role in the failure to investigate and prosecute Burge for torturing Wilson. (Statement of Richard M. Daley, June 12, 1006; Statement of Richard Devine, June 15, 2006)[11]

The Special Prosecutors asked no additional questions of Daley and Devine concerning their subsequently acquired knowledge of torture at Area 2 or about their failure to take action during Daley's tenure as State's Attorney and Mayor and during Devine's tenure as State's Attorney. U.S. Magistrate Judge Geraldine Soat Brown has recently found that "the statement taken by the Special Prosecutor from Mr. Daley contains little useful information. It consists almost entirely of leading questions posed by [Egan and Boyle], often prefaced by long factual

[11] According to Devine, after Daley had given his June statement, but before Devine gave his three days later, they discussed the substance of Daley's testimony, particularly that portion where Daley asserted that he delegated responsibility to his subordinates in Wilson and other cases when he was State's Attorney.

recitations." (*Hobley v. Burge*, Memorandum Opinion and Order of Magistrate Judge Brown, 2007 U.S. Dist. LEXIS 12159, February 23, 2007) Brown then ordered that Daley sit for what the *Chicago Tribune* described as a "blockbuster" deposition. (Id.; *Chicago Tribune*, February 25, 2007)

The evidence before the Special Prosecutors also revealed that while Daley was State's Attorney, more than 50 additional cases of torture arose in Area 2. Assistant State's Attorneys (hereinafter ASAs) sought — and obtained — death sentences in several such cases. In addition, ASAs under Daley took purported confessions from a number of torture victims. When torture allegations were raised in court by victims, other Daley ASAs defended the veracity of such confessions, claiming that no torture had occurred.

Then, in 1992, three years after Daley became Mayor, he received a report (hereinafter the Goldston Report), based on an internal investigation by Michael Goldston of the Police Office of Professional Standards (hereinafter OPS), stating that Burge and his subordinates had engaged in "systematic" torture and abuse for more than a decade.

Instead of taking the Goldston Report seriously and ordering the Chicago Police Department (hereinafter CPD) to take action, Daley publicly condemned the OPS methodologies and conclusions. (*Chicago Tribune*, February 8, 1992) The evidence before the Special Prosecutors also showed that for eight years Devine and his law firm, acting as specially appointed corporation counsel, earned more than $1 million defending Burge against Wilson's and other victims' charges of torture, then, for the next five years, as the State's Attorney of Cook County, Devine blocked all substantive investigations of Area 2 torture, defended against

the claims of torture raised by criminal defendants, and continued to rely on these defendants' confessions obtained by torture in arguing that their convictions should be upheld.[12]

None of this evidence was explored with Daley, Devine, or anyone else, nor does it appear that it was seriously scrutinized by the Special Prosecutors. Moreover, neither Daley nor Devine receive *any* blame or criticism in the Special Prosecutors' Report for their failures to investigate and prosecute *anyone* involved in the torture scandal. Instead, the Report criticized Brzeczek and, to a lesser extent, Kunkle, for not taking action that Daley and Devine should have taken but did not.

Without the participation of Daley and Devine as silent accomplices, the torture at Areas 2 and 3 could not have continued. Yet the Special Prosecutors did not expressly blame Daley or Devine, saying only that, "The actions of the State's Attorney's Office and the Chicago police department do not redound to their credit" (Special Prosecutors' Report, p. 151) and reflected "a bit of slippage in the State's Attorney's Office." (Chicago Tribune, July 20, 2006)

## FAILURE TO DOCUMENT THE SYSTEMIC AND RACIST NATURE OF THE TORTURE AND TO BRAND IT AS TORTURE

*The Special Prosecutors did not document the systemic and racist nature of the torture and did not brand it as such in accordance with the international definition of torture.*

In evaluating the individual cases of torture and the credibility of the victims, the Special Prosecutors did not analyze or utilize a vast amount of evidence of common scheme, plan, and motive by Burge and his men to torture suspects. Similarly, the Special Prosecutos refused to

[12] The refusal to investigate continued from 1997 until 2002 when Judge Biebel found that Devine and his office had an actual conflict of interest and appointed the Special Prosecutors to investigate Area 2 torture. In April of 2003, Judge Biebel disqualified Devine and the SAO from further involvement in prosecuting cases where the defendant alleged police torture.

rely on the numerous official findings, admissions, and decisions of individual and systemic torture. The Report never finds that the "abuse" described above was in reality torture as defined by state, federal or international law. Neither does the Report discuss or condemn the racist nature of the torture or the admitted racist attitudes of the torturers. In fact, those who committed torture, with the exception of Burge, were not named in the Report.

Moreover, there was no mention of the fact the torture techniques alleged were similar in many cases — electric shock, suffocation by baggings, mock executions, and beatings designed to leave no marks — even though the Special Prosecutors professed to find many of the allegations believable. Additionally, there is no mention of the hundreds of times that Area 2 and 3 detectives and supervisors appeared in court and testified that they had not witnessed, participated in, or otherwise become aware of torture, even though the Special Prosecutors professed to believe many of the torture claims that the officers had denied under oath.

In the face of all of this evidence, the Report stated only, without further analysis, that Burge was "guilty" of "abus[ing] persons with impunity," that it therefore "necessarily follows that a number of those serving under his command recognized that if their commander could abuse persons with impunity, so could they," and that "there are many other cases that lead us to believe or suspect that the claimants were abused."[13]

Not once did the Report use the word "torture," using in its place such terms as "abuse" and "mistreatment." It was only at the press conference following release of the Report that the Special Prosecutors somewhat reluctantly acknowledged that the conduct amounted to torture. Also, it was only at the post-release press conference that they reluctantly stated that they

---

[13] Special Prosecutor Boyle said that they "believed" that abuse had taken place in "about half" of the 148 cases they investigated.

believed abuse had occurred in 74 of the cases; that the allegations "seemed to center on a crew known as the midnight crew;" and that "there are a number of officers who seem to predominate relative to the number of allegations that are made, allegations that we have said that we think happened."

**Findings, decisions, and admissions**[14]

In 1990, Michael Goldston completed his study of some fifty alleged torture cases that occurred from 1972 through 1985 in Area 2 and made the following findings in a report submitted to Police Superintendent Leroy Martin, who previously had served as Burge's commander at Area 2:

> As to the matter of alleged physical abuse, the preponderance of the evidence is that abuse did occur and that it was systematic. The time span involved covers more than ten years. The type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture. The evidence presented by some individuals convinced juries and appellate courts that personnel assigned to Area 2 engaged in methodical abuse. The number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and participated in it either by actively participating in same or failing to take any action to bring it to an end. This conclusion is also supported by the number of incidents in which Area 2 offices are named as the location of the abuse. (OPS Special Project Conclusion Reports and Findings, November 2, 1990 (Goldston Report))

In supplemental findings, the OPS found that Detectives Jon Burge, John Byrne, Peter Dignan, John Yucaitis, and Charles Grunhard were "players" who were repeatedly named as abusers. (OPS Director Shines' letter to CPD Superintendent Martin and attached supplemental findings, April 30, 1991) Among the fifty cases studied, there were nine cases of electric shock, eleven cases of suffocation by bagging, one hanging, and one threatened hanging. (Id.)

---

[14] A complete listing and summary of all these findings, decisions and admissions can be found in Appendix B.

In January 1992, City lawyers, on behalf of CPD Superintendent Leroy Martin and the City, filed the following judicial admission at Police Board Hearings concerning the testimony of "seven additional victims of torture tactics at Area II headquarters:"[15]

> The testimony regarding similar acts sets forth detailed accounts of tortuous treatment that are almost identical to the torture suffered by Andrew Wilson. The testimony reveals an astounding pattern or plan on the part of respondents [Burge, Yucaitis and O'Hara] to torture certain suspects, often with substantial criminal records, into confessing to crimes or to condone such activity. (Memorandum In Opposition to Motion to Bar Testimony Concerning other Alleged Victims of Police Misconduct, filed before the Police Board in the *Matter of Charges Filed against Respondents Jon Burge, John Yucaitis and Patrick O'Hara,* Case Nos.1856-58, January 22, 1992, p. 1)

In 1993 and 1994, OPS investigators found:

- That Area 2 Sergeant John Byrne struck Darrell Cannon with a cattle prod on his testicles and penis and in his mouth, repeatedly called Cannon a "nigger;" and held a 9 mm handgun to Cannon's head; that Detective Peter Dignan played Russian roulette with a shotgun, attempted to lift Cannon by his handcuffs, and put a shotgun to Cannon's head; and that detective Charles Grunhard lifted Cannon up while Byrne held onto the cuffs; (OPS Investigator Tillman's findings in CR No. 134723)

- That Area 2 Detectives Ronald Boffo and James Lotito repeatedly struck Philip Adkins about the body and groin area with a flashlight; and that Lotito and Dignan made false reports to OPS concerning Adkins' injuries; (OPS Investigator Lawrence's findings in CR No. 142201)

- That Byrne and Grunhard used excessive force against Gregory Banks; that Byrne testified falsely in court that Gregory Banks was not physically abused in police custody; that Byrne, Dignan, Grunhard, and Robert Dwyer failed to report to a supervisor the use of excessive force against Banks; and that Byrne, Dignan, Dwyer and Grunhard gave false information while providing a statement to OPS about Banks; (OPS Investigator Cosey's findings in CR No. 188617)

- That Byrne and Boffo repeatedly struck and kicked Stanley Howard about the body and leg; and that Lotito repeatedly struck Howard about the body and jerked

[15] The seven victims relied upon by the City were Leroy Orange, Melvin Jones, Anthony Holmes, George Powell, Donald White, Shadeed Mumin, and Lawrence Poree. (Memorandum In Opposition to Motion to Bar Testimony Concerning Other Alleged Victims of Police Misconduct, filed before the Police Board in the *Matter of Charges Filed against Respondents Jon Burge, John Yucaitis, and Patrick O'Hara,* Case Nos. 1856-58, January 22, 1992, pp. 7-14)

Howard's body in the air causing the handcuffs to cut into Howard's wrists; (OPS Investigator Lawrence's Findings in CR No. 142017)

- That Dignan and Area 2 Detective David Dioguardi struck Lee Holmes with a rubber hose and placed a plastic bag over Holmes's head. (OPS Investigator Tillman's Findings in CR No. 126802)

On May 15, 1995, the City of Chicago admitted in a judicial filing in federal court that Jon Burge had in fact tortured Melvin Jones by threatening him with a gun and electrically shocking his genitals while Jones was handcuffed to a wall at Area 2. (*Wilson v. City of Chicago*, 86-C-2360, Local Rule 12 N Statement of the City, ¶ 26.) In *Wilson v. City of Chicago*, 120 F.3d 681, 683-85 (7th Cir. 1997), the City, in its appellate brief, conceded that "a properly instructed jury could have reasonably found that Burge participated in *such savage torture* of Wilson that the outrageousness of his conduct removed him from the scope of his employment," and the Seventh Circuit Court of Appeals held that Burge acted "within the scope of his employment" with the City "when he tortured Wilson," stating:

> Burge was not pursuing a frolic of his own. He was enforcing the criminal law of Illinois overzealously by extracting confessions from criminal suspects by improper means. He was, as it were, too loyal an employee. He was acting squarely within the scope of his employment. (*Wilson,* 120 F.3d, at 683-85)

In 1999, U.S. District Court Judge Milton I. Shadur found:

> It is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions. Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis. (*U.S. ex. rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999))

In January of 2003, Illinois Governor George H. Ryan granted four death row Burge torture victims, Madison Hobley, Leroy Orange, Stanley Howard, and Aaron Patterson, pardons based on innocence, finding:

> The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. We have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is so terribly broken about our system. (Statement of Governor George Ryan, DePaul University School of Law, January 10, 2003)

In her concurring opinion in *Hinton v. Uchtman*, 395 F 3d 810, 822-23 (7th Cir. 2005), Seventh Circuit Court of Appeals Judge Diane Wood found that "police abuse ran rampant" at Area 2 under Burge and that:

> [A] mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department during the exact time period pertinent to Hinton's case [November 1983]. Eventually, as this sorry tale came to light, the Office of Professional Standards Investigation of the Police Department looked into the allegations, and it issued a report that concluded that police torture under the command of Lt. Jon Burge — the officer in charge of Hinton's case — had been a regular part of the system for more than ten years. And, in language reminiscent of the news reports of 2004 concerning the notorious Abu Ghraib facility in Iraq, the report said that "[t]he type of abuse described was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture." The report detailed specific cases . . . Behavior like that attributed to Burge imposes a huge cost on society: it creates distrust of the police generally, despite the fact that most police officers would abhor such tactics, and it creates a cloud over even the valid convictions in which the problem officer played a role. Indeed, the alleged conduct is so extreme that, if proven, it would fall within the prohibitions established by the United Nations Convention Against Torture ("CAT"), which defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . .," thereby violating the fundamental human rights principles that the United States is committed to uphold.

Only months after the *Hinton* decision, on May 19, 2006, the United Nations Committee Against Torture (CAT) stated that:

- The Committee is concerned with allegations of impunity of some of the State party's [U.S. Government's] law enforcement personnel in respect to acts of torture or cruel, inhuman or degrading treatment or punishment. The Committee notes the limited investigation and lack of prosecution in respect to the allegations of torture perpetrated in Areas 2 and 3 of the Chicago Police Department (article 12).

- The State party should promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment

by law enforcement personnel and bring perpetrators to justice, in order to fulfill its obligations under article 12 of the Convention. The State party should also provide the Committee with information on the ongoing investigations and prosecution relating to the above-mentioned case. (Conclusions and Recommendations of the UN Committee Against Torture, May 19, 2006, & 25, p. 7)[16]

**Statements and testimony by Area 2 officers**

The Special Prosecutors were presented with numerous statements of Area 2 detectives that corroborated the existence of systemic, racist torture at Area 2, but no mention of this evidence can be found in their Report. The first source was a series of letters sent in 1989 to Andrew Wilson's lawyers during his civil trial by an anonymous Area 2 source. This source correctly identified torture victim Melvin Jones, named the core members of Burge's torture crew, including Byrne, Dignan, Yucaitis, Paladino, Hill, and Glynn, and stated:

> I believe that I have learned something that will blow the lid off your case. You should check for other cases where Lt. Burge was accussed (sic) of using this devices (sic). I believe he started many years ago right after he became a detective. . . . I have checked into who was assigned to Area 2 while this was going on and have some comments on the people assigned. You must remember that they all knew as did all of the State's Attorneys and many judges and attorneys in private practice. (First and Second Letters from anonymous police source, postmarked February 2, and March 6, 1989)

The source also asserted that Donald White and his brothers — who were picked up in connection with the murder of Chicago Police Officers Fahey and O'Brien — were beaten at police headquarters with the knowledge of State's Attorney Daley, Mayor Byrne, Superintendent Brzeczek, and Chief of Detectives William Hanhardt:

---

[16] In response to the public furor after the release of the Special Prosecutors' Report, Mayor Daley, while refusing to admit to his role in the scandal, made the following public admissions in a July 21, 2006 press statement: That the City "strongly supported the release of the Special Prosecutors' Report on the practice of abuse and torture of suspects in the 1970's and 1980's at the Calumet Police District [Area 2]" because "the public has the right to know about this shameful episode in our history;" that "no suspect should be subjected to the abuses detailed in [the Special Prosecutors'] Report, and no suspect should ever be coerced into confessing to crimes he did not commit. This fundamentally undermines our system of justice and destroys public confidence. It should never happen;" and that "Burge and his Unit" participated in a "pattern of misconduct." (Press Statement of Richard M. Daley, July 21, 2006, pp. 1-2)

> Several witnesses including the Whites were severely beaten at 1121 S. State Street in front of the Chief of Detectives, the Superintendent of Police and the State's Attorneys, that Mayor Byrne and State's Attorney Daley were aware of the actions of the detectives, that ASA Angarola told both of them and condoned their actions . . . Mayor Byrne and State's Attorney Daley ordered that numerous complaints filed against the police as a result of this crime not be investigated, and that this order was carried out by an OPS investigator named Buckley who is close to Alderman Burke. (First Letter from anonymous police source, postmarked February 2, 1989)

In subsequent letters, the source further stated that:

> Burge hates black people and is an ego maniac. He'd do anything to further himself. . . [T]he common cord is Burge. The machines and plastic bags were his and he is the person who encouraged their use. You will find that the people with him were either weak and easily led or sadists. He probably did this because it was easier than spending the time and the effort talking people into confessing. . . You could check in the taverns at 103rd and at 92 and Western and you will find that Burge youse (sic) to brag about everyone he beat. (Third and Fourth Letters from anonymous police source, postmarked March 15 and June 16, 1989)

During the Special Prosecutors' investigation, five retired African American, former Area 2 detectives broke the code of silence by giving sworn testimony to lawyers representing several *pardoned* torture victims. One of the five, Detective William Parker, testified that while working at Area 2 as a robbery detective in September 1973, he heard a shrill cry coming from an interrogation room. As he opened the door to the interrogation room, he saw an African American man, handcuffed to radiator with his pants pulled down. Next to the man were Jon Burge and two other white detectives. Surprised to see Parker at the door, one of the detectives took something off the desk and put it on the floor. He later concluded that the detectives were attempting to conceal Burge's electric-shock box. Parker described the African American male as looking panicked, scared and in pain. Following the incident, one of the detectives told Parker that their investigation was not any of his business and that he had no right to barge in while they were interrogating the suspect. Not long after the incident Parker was transferred out of Area 2. (Statement of William Parker, October 4, 2004, pp. 5-16)

In November 2004, Sergeant Doris Byrd testified that between 1981 and 1984, while she worked at Area 2, detective Frank Laverty came forward (during the George Jones trial) and exposed the existence of secret street files used by Chicago Police detectives. In what Byrd called a message to other officers who considered breaking their code of silence, Burge pointed a gun at the back of Laverty's head as he left a room at Area 2 and said "bang." Furthermore, she testified that while she was assigned to Area 2 she would often remain on duty after 1:00 a.m. and on occasion would hear screaming and other unusual noises coming from interview rooms. She remembered hearing detainees saying "stop hitting me," or "what are you hitting me for?" Byrd further testified that she was told by individuals who were interrogated at Area 2 that detectives had physically abused them with telephone books, plastic bags, and an electric shock box. She said that "the black box was running rampant through the little Unit up there," that she heard about it both from detectives and suspects, that the telephone books, bags, and the electric shock box were an "open secret" at Area 2, and that this kind of abuse was linked to Burge and Byrne and the midnight shift. (Statement of Doris Byrd, November 9, 2004, pp. 8-12, 16)

Moreover, Byrd testified that when she was in the Area 2 stationhouse during the manhunt for the killers of police officers Fahey and O'Brien in 1982, she observed an African American man attached to a hot radiator. She said it was her understanding that Burge was given a mandate by Mayor Byrne to do anything he had to do, including using torture tactics, to solve the murders of Fahey and O'Brien. According to Byrd, following Gregory Banks' arrest, detectives working the midnight shift obtained a statement from him which she understood was obtained by torture. She further stated that it was well known that Burge and his subordinates used torture to obtain confessions and it was an "open secret" at Area 2. She further testified that Burge was a racist, that Byrne, Dignan, Paladino, Hill, George Basile, and Frank Glynn

were all members of his torture team, and that after an anonymous police source named her as a possible "weak link," she received a call from a Chicago Police Captain who was a friend of Dignan's named Phelan, who said that Dignan was worried about her testifying against him. (Id. at 13, 22-23, 26-29)

Melvin Duncan, a retired homicide detective who worked at Area 2 during the 1970s, gave a sworn affidavit to victims' attorneys in May 2004 in which he stated that during a visit to the Area 2 Robbery Office, he saw a dark wooden box. He thought the box could give electric shocks, like an electrical device with a crank, wires and prongs which his father had demonstrated on him and his brother when he was a child. He further stated that while working at Area 2 he sometimes heard loud and unusual noises coming from the Area 2 Robbery Unit Office and that he heard that certain detectives used an electrical box and cattle prods on people to obtain confessions. He further averred that while working with detective Peter Dignan at Area 2, he formed the opinion, based on Dignan's treatment of an African American crime victim, that Dignan had racist attitudes. (Affidavit of Melvin Duncan, May 20, 2004, pp.1, 4, 5-7, 10)

In a sworn statement dated November 2, 2004, Walter Young testified that in 1980, while he was assigned to Area 2, that he saw a box-like object with what appeared to be a crank in the basement of Area 2, and that after hearing stories and conversations from other Area 2 detectives, he concluded that the box he saw might have been the electrical box that was said to have been used on certain people brought into the Area. He further testified that in the conversations that he overheard at Area 2, there were references to the Vietnamese and Vietnam, that suspects could be made to talk if the same techniques were basically used that were used in Vietnam, that the term "Vietnam special" or "Vietnam treatment" was used, and that based on seeing the box, and overhearing conversations, he later deducted that the

"Vietnam treatment" probably referred to the use of electric shock.[17] Young testified that on one occasion, while walking past an interview room, he heard unusual noises, saw Burge walking out of the room, and an African American suspect sitting on the floor handcuffed to a ring on the wall. Young further stated that Burge had a reputation of being forceful in his investigations, that during the manhunt for the killers of officers Fahey and O'Brien in February 1982, he overheard conversations from detectives that force was being used on suspects, and that he heard Area 2 detectives say that a phone book would sometimes help people refresh their memories, that phone books don't leave marks, and that plastic bags help to cushion the phone book. Young also concluded from the way he and his fellow African American detectives were treated by Jon Burge, that Burge was a racist. (Statement of Walter Young, November 2, 2004, pp. 2-4, 6-8, 10, 12, 18, 27-28, 31)

In his October 17, 2004 sworn statement to victims' attorneys, former Area 2 detective Sammy Lacey testified that during the 1980s police personnel working at the Fifth District police station (which was on the first floor of Area 2), asked him "what was going on on midnights," and "what are they doing to people up there on midnights?" Lacey further averred that Jon Burge was often present at Area 2 when Lacey left work at the end of his shift at midnight and "if there was any questioning, he was there." He stated that he was present at Police Headquarters when Donald White was brought there as a suspect in the Fahey and

---

[17] Burge was a military police interrogator assigned to a prisoner of war compound in Vietnam. In his February 2005 article entitled *The Tools of Torture, Chicago Reader* John Conroy reported on his interviews with officers who served with Burge in Vietnam, and their knowledge of the use of electric-shock torture on POWs by U.S. soldiers and military policemen. This electric shock torture was delivered by a hand cranked generator that also served as a military field telephone. Additionally, a childhood friend of Burge's, radio personality Ed Schwartz, recounted how Burge was an "electrical whiz" who rigged up a communications system for a school play which included "a telephone control box which contained a little crank that generated voltage to ring a bell for a closed circuit phone system." (*Southtown Economist*, "Jon Burge, Grade School Patrol Boy and Electrical Whiz," July, 20, 2006)

O'Brien murders, and that he was left downstairs with Commander Milton Deas, (who is African American), while Burge and Chief of Detectives William Hanhardt took White to another floor where White alleged that Burge and his men tortured him. (Statement of Sammy Lacey, October 17, 2004, pp. 16-17; Deposition of Donald White in *Wilson v. City v. Chicago*)

In his statement, Lacey said that when Burge left Area 2 to work at Area 3, many of the midnight shift detectives went with him. Lacey went on to say that he heard (off the record) that strange things were going on there and that a lot of confessions were being obtained. Lacey further stated that Burge did not permit African American detectives to work the midnight shift or to investigate homicides, and that when Area 2 Commander Leroy Martin was notified of this scheme, Burge found out and subsequently berated the African American detectives the next day. (Statement of Sammy Lacey, October 17, 2004, pp. 16-20; Statement of Sammy Lacey to the Special Prosecutors, October 12, 2004)

On September 20, 2004, Investigator Mort Smith interviewed Barry Mastin, an African American and former Area 2 general assignments detective who worked on the first floor of Area 2 from 1972 to 1977. He said that it was an "open secret" that certain white detectives tortured and abused suspects on the second floor. He said that suspects were often brought through the back door and held incommunicado for several days. He also heard that a suspect was held out the window by his ankles during an interrogation, accidentally dropped and charged with attempted escape. (Mort Smith Memorandum of interview with Barry Mastin, January 25, 2005) In late 1993, OPS investigator Veronica Tillman interviewed Raymond Peterson, the building engineer at the old Area 2, located at 91st and Cottage Grove. According to Peterson, Area 2 had a "nasty reputation" and that "a lot of abuse went on in that station." (OPS Investigator Tillman Interview with Raymond Peterson in CR No. 202019)

Less than a month before he died, white Area 2 homicide detective Frank Laverty gave a sworn statement concerning his knowledge of Burge, Area 2 torture, and the racist attitudes that predominated at Area 2. Laverty testified that one robbery detective told him that he "wasn't going to kiss no nigger's ass if he was transferred into homicide." (Statement of Frank Laverty, November 10, 2006, p. 3) Laverty further stated that "unfortunately" the term "nigger" was commonly used at Area 2. Among those with racist attitudes, Burge "stood out as having more of that attitude." (Id. at 4, 16)

Laverty further testified that when he made the arrest of Donald White (for the murders of Fahey and O'Brien on February 12, 1982), and was preparing to transport him back to Area 2, Burge took the prisoner from him. In response, Laverty testified that he told Burge "I'm turning him over to you and there ain't nothing wrong with him; he hasn't been touched." (Id. at 4-5) Laverty said that he feared that White would be harmed. (Id. at 5) According to Laverty, Burge took White to Police Headquarters, where Laverty heard that despite repeatedly maintaining his innocence in the murder of the police officers, White was extensively beaten by Area 2 detectives while in the presence of Burge and Chief of Detectives Hanhardt. (Id. at 6-7) Laverty further learned that White was subsequently taken to a civilian polygraph examiner who worked for the CPD at Police Headquarters. The polygrapher later confirmed to Laverty that Burge and Hanhardt had been involved in the beating, and said that White was so bloody and beaten when he was brought in for the polygraph that White "should have been in the hospital, not a polygraph office." (Id. at 8) A "big argument" ensued, and the polygraph examiner was later fired for his resistance to polygraphing White. (Id. at 8-10) The Special Prosecutors did not interview Laverty.

Additionally, in a March 2004 sworn videotaped statement, Eileen Pryweller, sister of Area 2 detective Robert Dwyer, stated that she had a conversation with her brother and Jon

Burge at Dwyer's house in mid-January, 1987. During that conversation, Burge and Dwyer described how they dealt with "niggers" during interrogations, stating that they'd "give them hell," "beat the shit out of them, throw them against walls, burn them against the radiator, smother them, poke them with objects, [and] do something to some guys' testicles." Pryweller further testified that Dwyer said, "this skinny little nigger, boy I got him [by] just torturing him, smothering him," while Burge laughed. They made an additional reference concerning this torture victim's case that established that they were talking about Madison Hobley. She further testified that Burge seemed proud of his torture tactics, that he and Dwyer were "full of hate," that Burge "described some techniques that he had that no one could even fathom," and that Dwyer said he could "make anyone confess to anything." Pryweller went on to say that in the summer of 2002, while visiting Marin County, California, for her sister's funeral, her brother, Robert Dwyer, approached her and in a private conversation, brought up Burge and the 1987 conversation, and conveyed what she perceived to be a threat. (Statement of Eileen Pryweller, March 11, 2004, pp. 5-6, 9-13, 24-32)

**Admissions by Area 2 officers**

The Special Prosecutors were also presented with a series of admissions made in sworn testimony by numerous Area 2 officers, that the use of racial epithets, particularly the racist term "nigger," was commonly used by Burge, Byrne, and numerous of their detectives at Area 2. Specifically, John Byrne, in sworn testimony at his March 1, 2001 deposition in *People v. Patterson*, and Peter Dignan, in his 1996 sworn deposition in *Wiggins v. Burge*, both admitted that they, Burge and other Area 2 officers commonly used the term "nigger." (Deposition of John Byrne in *People v. Patterson*, pp. 67-68, 136, 181; Deposition of Peter Dignan in *Wiggins v. Burge*, pp. 60-63, 64-65) Additionally, in sworn depositions given in the cases of *Evans v.*

*City of Chicago and Terry v. City of Chicago*, Sergeant Thomas Ferry, and detectives Fred Hill, Tony Katalinic, Joseph DiGiacomo, and John Ryan also admitted to either repeatedly using the term, or of hearing other detectives repeatedly use it. Ferry also admitted that Burge had a reputation for mistreating suspects during the time that Ferry was a sergeant at Area 2 in the late 1970s and early 1980s. The Special Prosecutors' Report makes no mention of these admissions.

**Expert opinions and testimony of assistant public defenders**

The Special Prosecutor was also presented with the opinions of several internationally respected experts on torture and police practices. Dr. Robert Kirschner testified in a suppression hearing in an Area 2 case that over a 15-year period he had evaluated approximately two hundred torture victims around the world, and that he had often been called on to evaluate whether there was systematic torture being practiced by the police and other governmental authorities. Kirschner further testified that he had done much of his work on behalf of the United Nations, for whom he had written portions of a protocol that defined the methodologies of torture and how to properly investigate and evaluate cases of alleged torture. (Testimony of Robert Kirschner, *People v. Cannon*, November 11, 1999, pp. 5-6, 10-45, 57-59, 69, 80-81, 90-93, 96) Dr. Kirschner further testified that in his opinion there was a pattern and practice of torture at Area 2 and later at Area 3 Headquarters under the command of Jon Burge, and that this opinion was based, *inter alia*, on his evaluations of several alleged Area 2 and 3 torture victims, including Andrew Wilson, Darrell Cannon, Leroy Orange and Marcus Wiggins; the fact that frequent allegations of electric shock, bagging, and Russian Roulette only arose from Area 2 and later from Area 3 Headquarters while Jon Burge was the commander, and not against other officers in other station houses; and that the patterns and methodologies at Area 2 and 3 under Burge and

Byrne closely mirrored those which he observed, investigated, and evaluated in places such as Turkey and Israel. (Id. at 5-6, 10-45, 57-59, 69, 80-81, 90-93, 96)

Kirschner, who also served for many years as Deputy Chief Cook County Medical Examiner, also testified that during his work on homicide cases, he had discussions with detectives who acknowledged that there was torture at Area 2. (Id.) That Area 2 torture was common knowledge in the Criminal Courts of Cook County as early as the late 1970s was also confirmed by several Cook County Assistant Public Defenders who were interviewed by the Special Prosecutors. Specifically, former Assistant Public Defender Janet Boyle, who represented Area 2 victims in the late 1970s, told the Special Prosecutors that she "heard a lot of rumors and innuendos" in those days about "abuses by Area 2 detectives," "particularly Red Burge." (Summary of Special Prosecutors' Interview with Janet Boyle, April 6, 2005) Assistant Public Defender Tom Allen, who represented victims Sylvester Green and Eric Smith in the early 1980s, and is now a Chicago alderman, stated that it was "common knowledge" that abuse took place at Area 2 which he described as a "torture chamber" and that this abuse included electric shock, baggings, and beatings with a telephone book. (Summary of Special Prosecutors' Interview with Tom Allen, July 14, 2005)

Lee Carson, a Unit Supervisor in the Public Defender's Office, represented torture victims Gregory Banks, Thomas Craft and Alex Moore in the mid 1980s. He stated that Area 2 had a "reputation" for its "methods" within the Public Defenders' Office, and when he told a supervisor about Banks' allegations that he had been bagged, the supervisor responded, "Oh, that would be Area 2." (Summary of Special Prosecutors' Interview with Lee Carson, May 12, 2004) Carson said that he started to document "patterns" of abuse, including baggings, arising from Area 2, that Area 2 detectives "knew how to inflict pain without leaving marks in a number of

ways," and that Area 2 detectives were "skillful in their ability to have a different funny story" to explain the allegations of torture and abuse in each case. (Id.) He specifically named Byrne, Dignan, and Grunhard as frequently named torturers, said that torture and abuse at Area 2 was "common knowledge" in the 1980s, that "everyone down there [Area 2] knew about it but weren't talking about it," and said that his senior supervisors, including Tom Allen and James Epstein, told him that "there's (sic) a lot of complaints that come out of that place." (Special Prosecutors' Memorandum from Matens to Boyle, July 10, 2005)

Dr. Antonio Martinez, who had treated two hundred victims of torture and supervised treatment in eight hundred other such cases, evaluated several Area 2 victims and found psychological markers consistent with torture. (Testimony of Antonio Martinez in *People v. Cannon,* July 17, 1999, pp. 10-11, 32, 53, 58-59) Dr. Ross Romine, who worked for the Cermak Health Services, told the Special Prosecutors that "ear cupping" injuries were common at the jail and that it was common knowledge among the staff that they were the result of arrestees being slapped on the side of the head by police. (Special Prosecutors' Summary of Interview with Ross Romine, August 30, 2004)

Anthony Bouza, the former Police Superintendent of the City of Minneapolis, and a former New York City Borough Commander, hired by victims' attorneys in the civil cases, proffered the following opinions, which also were supplied to the Special Prosecutors:

- That, from 1972 to 1991, the City of Chicago had a systemic practice of subjecting African-Americans who were interrogated by Area 2 and 3 detectives and supervisors to abusive and coercive interrogations with the intended result of coercing, fabricating or otherwise creating false and/or unreliable inculpatory evidence to be used against the interrogated suspect without regard to his actual guilt or innocence.

- That, from 1972 to the present, the City of Chicago has, as a matter of practice, systemically failed to properly supervise, discipline or control detectives and supervisors at Area 2 and Area 3 who have repeatedly been accused of abuse of

African-American suspects during interrogations in order to coerce and fabricate inculpatory statements to be used against them.

- That there has been, from 1972 to the present, a systemic code of silence within the City of Chicago and its police department, particularly with regard to police abuse, and the resultant coercion and fabrication of evidence by Area 2 and Area 3 detectives.

- That at least since February of 1982, the highest ranking officials in City and County Governments, the Police Department, and the City Council, including Jane Byrne, Richard Brzeczek, Richard Daley, Richard Devine, and numerous police command personnel, were aware that there was a serious and systemic problem at Area 2 concerning the abuse of African-American suspects in order to coerce and fabricate confessions, and that they encouraged and condoned this practice.

- That the systemic abuse, interrogations, and the resultant coercion and fabrication of evidence by Area 2 and 3 detectives and supervisors were done with racial animus and discriminatory intent. (Bouza Opinions tendered in *Hobley v. Burge* on October 20, 2005 and in *Orange v. Burge* on August 19, 2006)

**Statistical analysis of documented cases of torture under Burge**

Attorneys for the victims of torture have documented one hundred and seven (107) cases of police torture and abuse at Area 2, and later, at Area 3, from mid 1972 until Burge's suspension from the Police Department in the fall of 1991.[18] A summary of these cases is attached as Appendix C. The Special Prosecutors had the documentation as to each and every one of these cases, and also investigated another forty-one cases that either did not arise under Burge's command, or did not involve allegations of torture or other serious physical abuse. In the vast majority of the 107 cases, the torture was contemporaneously documented by outcry evidence, medical evidence, motions to suppress testimony, OPS complaints, and/or testimony by victims and witnesses. Before the anonymous police source brought the Melvin Jones case to

[18] For a complete summary of each of the 107 documented cases, including the name of the victim, the date and nature of the alleged torture, and the names of the alleged torturers, see Appendix C of this Report.

light in 1989, Burge, his men, the Cook County State's Attorneys' Office, and the CPD had successfully kept the systemic nature of the torture hidden. Two years later, the OPS studied fifty Area 2 cases that had been discovered, nine of which alleged electric shock, and eleven of which alleged baggings. It was on these fifty cases that the OPS made, in the Goldston Report, its findings of systemic abuse and torture at Area 2. At the time the Special Prosecutors began their investigation in 2002, there were approximately seventy documented Area 2 torture cases, and the remainder of the known documented cases were uncovered by victims' attorneys and by the Special Prosecutors during subsequent investigation.

Of the 107 Area 2 and 3 torture cases that are now known, 80 occurred at Area 2 between 1972 and 1987. A closer analysis of the torture in those years reveals that all but one of the 80 cases arose during the time periods when Burge was a midnight shift robbery detective, (1972-74), midnight shift Robbery Sergeant (1977-80), and commanding Lieutenant of the Violent Crime Unit at Area 2 (1981-86) and while John Byrne was the midnight shift sergeant at Area 2 (1982-86). When Burge and Byrne moved to the Bomb and Arson Unit, torture at Area 2 subsided, except for the 1987 torture of Madison Hobley, and Hobley's interrogation was conducted by Area 2 detectives under the joint supervision of Bomb and Arson Commander Burge and new Area 2 Violent Crimes Lieutenant Phil Cline, who recently retired as CPD Superintendent. In 1988, then Superintendent Leroy Martin, who had been Burge's commander at Area 2 in 1983, reassigned Burge to be Commander of Area 3 Detective Division, and Burge brought Byrne, Paladino, McWeeny, and Maslanka to Area 3 shortly thereafter. Torture cases, some twenty-six in number, were then reported in Area 3 from 1988 to 1991, while the only

documented case from Area 2 was the Anderson case, in which several Area 3 detectives, transferred from Area 2, worked together with their former confederates at Area 2.

A further analysis of the 107 torture cases shows that one or more detectives or supervisors were identified by name in 92 of the cases. A total of 67 different officers were identified by victims, testimony, or reports in one or more of the cases. Sixty-four of the 67 officers were white. Forty-six worked at Area 2 under Burge and Byrne, 11 under Burge and Byrne at Area 3, and three worked at both Area 2 and 3 under Burge and Byrne. Burge was named as directly involved in 35 cases, and was the supervising Lieutenant or Commander in virtually all of the remaining cases, while Byrne was named as directly involved in twenty cases, and was a supervising sergeant in numerous additional cases. Dignan was named in 17 cases, Paladino in 13, Yucaitis in 12, McWeeny in 11, Maslanka in 10, Dwyer in 9, and Madigan in eight. Twelve additional detectives were named between five and seven times.[19] All together, 21 Area 2 detectives and supervisors were named in five or more torture cases.

**Electric shock, suffocation, and racist abuse**

Further analysis shows that torture by electric shock was alleged in twenty-two cases, and the threat of electric shock in four additional cases. In most of these cases, the electric shock was administered by a generator housed in a dark box, with a cattle prod or curling iron type device used on other occasions. Burge was alleged to be directly involved in 15 of these cases, while Yucaitis, Byrne, Dignan, McWeeny, Hoke, Paladino, and Maslanka were also named as being involved in multiple shockings.

---

[19] Grunhard, Pienta, and Basile were named seven times, Hoke, Dioguardi, Lotito, Kill, and Boffo six times, and McGuire, McNally, McDermott, and Corless, five times.

Suffocation by typewriter cover or plastic bags were alleged in 23 cases. Burge was directly involved in 10 of those suffocation cases, Byrne in eight, Grunhard in five, Dignan, McWeeny, Yucaitis, Boffo and Lotito in four, and Dwyer, Paladino, Pienta, Dioguardi, and Bajenski in three. Six additional detectives were involved in two bagging cases, and 14 detectives were involved in one bagging case.[20]

Racial epithets, almost always including the term "nigger," were reported in twenty cases. On at least one occasion the electric shock box was referred to as the "nigger box," and on another occasion the box was introduced with "this is what we've got for niggers like you." One victim was threatened with hanging, "like they had other niggers," while on another occasion, suffocation by bagging was introduced by "we have something for niggers." One victim had a gun put to his head and the detective threatened to "blow his black brains out."

**Mock executions and beatings**

Mock executions and gun threats were reported on 15 occasions. Most frequently, this terrifying act took the form of "Russian roulette" — guns to the head or in the mouth — while on one occasion Byrne and Dignan acted out a shotgun mock execution. On five other occasions, the victim was beaten with a pistol or a shotgun. An alleged suicide occurred after one interrogation, suicide was attempted in another, and there were three threatened hangings.

Beatings with a flashlight were reported thirteen times, with a phone book thirteen times, with a nightstick six times, with a rubber hose or lead pipe three times, and with a small baseball bat once. On thirty-six occasions, the victims alleged attacks on their genitals, by

---

[20] Madigan, Hoke, McNally, McGuire, Flood and McCann were involved in two bagging cases, while Hill, Glynn, Mokry, McCabe, O'Hara, McKenna, Joe Gorman, Corless, McDermott, Marley, Basile, Leracz, Krippel, and Hines were named in one case.

shocking, kicking, or striking with an object, while on six occasions, the victim was choked or gagged. On four occasions the victim alleged burning, on three occasions, the victim was subjected to ear cupping or thumb pressure to the ears, and on two occasions, the victim was threatened with interrogation by detective Joe Gorman, who was notorious for his role in the Black Panther Police raid. On two occasions, the victim was suspended by his handcuffs, on two occasions either stripped naked or into his underwear, and on one occasion, had his head placed in a toilet bowl. Sleep, food, and bathroom deprivation was also a common complaint.

All of the foregoing information, which was available to the Special Prosecutors, clearly demonstrates the systemic and racist nature of the torture.

## THE SPECIAL PROSECUTORS' INVESTIGATION WAS DEEPLY FLAWED FROM THE START

*The Special Prosecutors conducted an investigation that was hopelessly flawed and calculated to obfuscate the truth about the torture scandal.*

Despite the fact that the majority of the victims had previously testified extensively under oath in prior proceedings as to their torture experiences, the Special Prosecutors, ignoring common prosecutorial practice, spent an inordinate amount of time and money re-questioning each and every torture victim willing to cooperate.[21] While the Special Prosecutors displayed a great deference toward the public officials whom they questioned, they showed an equal amount of insensitivity to those who were the victims and, in some cases, continued to suffer serious mental distress and anguish as a result of having been tortured. Furthermore, as noted

[21] Prosecutors, as a practice, do not take formal statements from victims in cases they are prosecuting because such statements must be provided to defense attorneys before trial and are often used by the defense to attack the victims' credibility.

previously, the Special Prosecutors attacked the credibility of the one ranking police witness they were handed at the inception of the investigation — Superintendent Brzeczek.

At least ten different grand juries were used, yet only five witnesses provided substantive testimony. No African-American detectives were called, nor were any of the torture victims or their corroborating witnesses. Several leads concerning detectives who had witnessed abuse by Burge and privately complained about it were not pursued, while at least one detective, who was involved in several important torture cases, including Andrew Wilson's, was told that he was not a target of the investigation, and then not pursued.

The Special Prosecutors ignored key Burge operative John Byrne's offer to formalize his denials before a court reporter; other key supervisory and command witnesses were either not interviewed at all, or their interviews were not transcribed or even summarized in memoranda.[22] Of the 44 known ASAs who took statements from 56 of the victims, only 17 were interviewed, and the interviews pertained to only 25 of the cases. None was offered immunity, and only one, Lawrence Hyman, was called before a grand jury.

More than three and a half years after the investigation began, the Special Prosecutors granted immunity to four officers, without obtaining written proffers of their testimony, and without assurances that they would give truthful evidence concerning their actual knowledge of torture. If even one of these officers had been indicted for his denials before the grand jury, and immunity then strategically given to additional officers who were deeply involved in the torture, and to several involved ASAs, the code of silence might well have been pierced.

---

[22] There is no memo of the interview of key witnesses CPD Deputy Superintendent Lyons, CPD Deputy Superintendent McCarthy and Jeffrey Kent, head of the Special Prosecutions Bureau of the SAO, in the 1980s; other key figures were not even interviewed. Devine was interviewed, but there is no written record of what he said.

Moreover, the recommendations of several of the African American Assistant Special Prosecutors were overruled and ignored — most significantly when Tommy Brewer urged early in the investigation that police witnesses be aggressively pursued, and when the late Donald Hubert found that there was compelling evidence that Madison Hobley had been tortured by bagging and beating. (Assistant Special Prosecutor Donald Hubert's Memorandum on Madison Hobley's Investigation, July 6, 2004)

## THE CREDIBILITY OF THE ALLEGED TORTURERS — AS OPPOSED TO THAT OF THEIR ALLEGED VICTIMS

*The Special Prosecutors unfairly evaluated the credibility of the alleged torturers and of their victims and unfairly attempted to discredit torture victims who had pending civil or criminal cases.*

While the credibility of the victims — the vast majority of whom cooperated with the Special Prosecutors' investigation — was attacked in the Report, there was no analysis of the credibility of the alleged torturers, or the lack of it. The officers' lack of credibility is demonstrated not only by the prevalence of many similar allegations by torture victims, but also by numerous inconsistencies, omissions, distortions, and falsehoods, which permeate the alleged torturers' prior testimony in the victims' criminal cases, the testimony of Area 2 African American detectives, and the OPS findings that Area 2 officers lied in a significant number of cases. If the victims' allegations were credible, as the Special Prosecutors found many of them to be, it would follow that the officers' denials under oath in the victims' criminal cases were false. Yet the Special Prosecutors made such findings in only three cases. In addition, the Report also ignored repeated admissions of former Superintendent Martin and former OPS Director David Fogel, and the findings of several courts, that there existed within the CPD a code of

silence which manifested itself in the refusal of officers to testify against their fellow officers, particularly in police abuse cases.

Moreover, the Special Prosecutors chose to evaluate each case individually, using the highest legal standard available — reasonable doubt — rather than the standard applicable to a prosecutor seeking an indictment — probable cause. They made no evidentiary use of the "astounding" pattern of similar acts of torture by Burge, Byrne, Dignan, and their group of officers that occurred both before and after the individual case being evaluated, as well as sometimes to several co-defendants in the same case. This is the kind of proof that prosecutors routinely offer as substantive evidence, particularly in cases, such as rape prosecutions, where the credibility of the victim comes under attack from defense counsel. Moreover, the Special Prosecutors' refusal to utilize this evidence flaunted prior appellate decisions in several of the victims' cases where the court relied on this very evidence. Nor is there any evaluation of this pattern of torture evidence as an ongoing criminal conspiracy, the overt acts of which are these numerous individual cases, scores of which the Special Prosecutors professed to find credible.

Additionally, the Special Prosecutors chose to stand in the shoes of a hypothetical judge and make evidentiary rulings on the wealth of evidence that further corroborated the acts of torture, invariably divining, with little or no basis, that the evidence would not be admissible in a future prosecution. This evidence included the findings of the Goldston Report, outcry evidence to lawyers, doctors, judges, and family members, etchings documenting torture by suffocation in an interrogation room bench, the testimony of doctors and psychologists, including several who are internationally recognized in the field of identifying psychological markers of torture on their victims, the findings of torture and perjury by OPS investigators in several cases, and the expert opinions of an independent former police superintendent. In many

instances, the Illinois Appellate and Supreme Courts had relied on this very evidence to reverse the convictions of the victim, or to grant him a new hearing on his torture claims.

In each case, the Special Prosecutors placed primary emphasis on the underlying crimes for which the victims of torture were arrested and imprisoned, rather than on the torture itself. The victim was turned once again into the accused, interrogated by the Special Prosecutors, often without counsel, about inconsistencies in his tortured confession and his defense to the crime. In contrast, Burge and his subordinates all appeared with multiple counsel, supplied free of charge by the City and the Fraternal Order of Police, and either presented denials that stood unchallenged by the Special Prosecutors, or refused to testify. While the Special Prosecutors' Report highlighted alleged victim inconsistencies, and Andrew Wilson's prior invocation of the Fifth Amendment, the Report did not mention inconsistencies in the detectives' statements, their flaunting of immunity, or their refusal to cooperate with the investigation.[23]

More disturbingly, the Special Prosecutors placed particular emphasis on discrediting the four death row inmates — Hobley, Patterson, Orange, and Howard — who were granted pardons based on innocence by Governor Ryan and who had multi-million dollar federal lawsuits pending. In fact, the Special Prosecutors granted several of the defendants in the federal civil cases immunity from prosecution, apparently with an unusual incentive — that they would not pursue perjury charges against them — so they could testify in the pending federal cases.

---

[23] Wilson invoked the Fifth Amendment not in the Special Prosecutors' investigation and not regarding torture, while the detectives invoked the Fifth Amendment in the Special Prosecutors' investigation and in reference to torture. The Report lists forty Area 2 and Area 3 officers who were subpoenaed by the Special Prosecutors, but is silent about whether the officers cooperated, whether any were granted immunity and, if so, whether they continued to deny knowledge of torture. However, documents subsequently obtained by victims' attorneys, as well as statements made in open court and to the media, reveal that the vast majority of the officers subpoenaed either took the Fifth Amendment before the Grand Jury or, after grants of immunity, denied any knowledge of torture.

Additionally, the Special Prosecutors suppressed a finding by their own assistant, Donald Hubert, that Madison Hobley had been tortured. They also concluded that although Patterson had been beaten and suffocated, his case should nonetheless be closed because the evidence would not, in their opinion, be admissible in court. In the Leroy Orange case, they implied that Orange was untruthful, despite the absence of any corroborating evidence in the Report, and ignored medical and witness corroboration of the torture. The Report also ignored the City's specific admission that Orange was the victim of Burge's "astounding pattern or plan . . . to torture certain suspects . . . into confessing to crimes or to condone such activity." (January 22, 1992 City Memorandum In Opposition To Motion To Bar Testimony Concerning Other Alleged Victims of Police Misconduct, filed before the Police Board in the *Matter of Charges Filed against Respondents Jon Burge, John Yucaitis and Patrick O'Hara,* Cases No.1856-58) Instead they lifted, without attribution, substantial portions of the State's Attorney's memorandum in opposition to the pardon and an Illinois Supreme Court opinion in the case. In a further attempt to discredit Orange, the Special Prosecutors relied on the testimony of his criminal defense attorney, who not only failed to challenge the use of his tortured confession at trial, but who was also found ineffective during Orange's sentencing proceedings and subsequently disciplined by the Attorney Registration and Disciplinary Commission.[24]

[24] After the Release of the Special Prosecutors' Report, the City of Chicago, in November 2006, agreed to settle the Hobley, Orange, and Howard cases for a total of $14.8 million. In exchange, they obtained the agreement of those Plaintiffs not to sue Mayor Richard M. Daley for his actions while State's Attorney or to depose him as a witness in those cases. The City has subsequently refused to sign the settlement agreement, and its alleged bad faith in refusing to do so is now the subject of proceedings to enforce the settlement in Federal Court. (See *Chicago Sun Times*, February 25, 2007) The County has yet to make a settlement offer to these Plaintiffs to resolve their claims that Richard Devine and several Assistant Cook County State's Attorneys were also responsible for their wrongful convictions and imprisonment on death row.

## THE CONSPIRACY OF SILENCE AT THE HIGHEST LEVELS

*The Special Prosecutors ignored a wealth of evidence establishing that there was a widespread and continuing cover-up of the torture scandal — a conspiracy of silence — implicating high officials of the City of Chicago, the Chicago Police Department, and the Cook County State's Attorney's Office.*

The Special Prosecutors found that official action should have been taken in 1982 against Burge and his men for the torture of Andrew Wilson, but nonetheless absolved those who should have taken such action — Daley and Devine — of any responsibility. The stated reason for absolving them was that Wilson would not give ASAs a statement at a time when he was awaiting trial in a capital case.

The reasoning, however, was clearly spurious. Prosecutors often bring cases without victim cooperation — in murder cases, for instance. The truth is that in 1982 there was ample independent evidence to establish that Wilson had been tortured by Burge and his men. Wilson's cooperation was hardly necessary in view the evidence, which included:

- Medical documentation of radiator burns on Wilson's chest and face and bruises and lacerations to his face and body, including a battered right eye.
- Photographs of the radiator burns, bruises and lacerations, and aligator-clip markings on his ears.
- A statement from a woman held in the adjoining interrogation room that she heard Wilson repeatedly screaming and sounds of him being thrown to the floor.
- A statement form a CPD deputy commander that Wilson had no marks on his face or upper body when he was arrested.
- Evidence that the police lock-up keeper refused to accept Wilson because of his physical condition.
- Statements by a treating nurse and doctor that police who brought Wilson to the Cook County jail medical facility threatened him in an attempt to get him to refuse treatment.
- A statement from a commander that he saw Wilson at Area 2 with blood on his face.

- A statement from Dr. Raba that Wilson told him that he had been electric-shocked, burned, and beaten at Area 2.

- A statement from the lawyer who first visited Wilson that he complained of electric shock and had serious visible injuries.

- Evidence that there had been a number of other allegations of similar torture at Area 2.

With this evidence, responsible prosecutors would have taken appropriate action. Since Daley and Devine had an obvious conflict — they could hardly prosecute Wilson and his torturers at the same time — the proper course of action would have been to have referred the torture allegations either to the Illinois Attorney General or United States Attorney. Rather than sending the case elsewhere for investigation, however, Daley and Devine became the torturers' silent conspirators.

The Special Prosecutors also were presented with clear evidence that nearly 50 felony review ASAs from 1973 through 1993 were present at Area 2 during the interrogations of at least 56 alleged torture victims. Many of the alleged victims either showed signs of severe abuse or complained to the ASA, yet the ASAs nonetheless took their statements and later swore at suppression hearings that there had been no torture.

Daley, Devine, and their ASAs were hardly alone in their dereliction of duty and involvement in the torture cover-up. Among others who were aware of torture allegations but did nothing were CPD Superintendents Terry Hillard and Leroy Martin, OPS Director Gayle Shines, State's Attorneys Cecil A. Partee and Jack O'Malley, and CPD Counsel Thomas Needham, all of whom were absolved of wrongdoing by the Special Prosecutors.[25]

---

[25] For a detailed treatment of the facts demonstrating the complicity of these officials in the continuing cover-up of the torture scandal see Appendix E.

## THE COOK COUNTY JUDICIARY'S COMPLICITY IN THE TORTURE SCANDAL

*The Special Prosecutors failed to document the role of judges of the Criminal Division of the Cook County Circuit Court in the torture scandal.*

Over the last three decades, torture allegations arising from Areas 2 and 3 have been made in hundreds of suppression hearings, trials, and post-conviction proceedings in the Criminal Division of the Cook County Circuit, but no judge has ever found that a single act of torture occurred. Eleven felony review ASAs who took statements from suspects who claimed to have been tortured by Burge and his men have become judges, as have several other ASAs who defended against torture allegations.

Three ASAs involved in the Wilson case — William J. Kunkle, Frank Deboni, and Gregory R. Ginex — are now Cook County judges, and former State's Attorney O'Malley is an Appellate Court Judge. Recent deposition testimony in the *Orange* civil case also reveals that at least one sitting Criminal Division judge, Dennis A. Dernbach, gave money to Burge's defense fund and attended a Burge fundraiser. (Deposition of Dernbach in *Orange v. Burge*) According to the *Chicago Reader,* Judge Nicholas R. Ford, who as an ASA took a confession from an alleged torture victim, denied that same alleged victim's post conviction torture claim without a hearing. (*Chicago Reader*, December 1, 2006)

Had the Special Prosecutors' found torture, obstruction of justice, perjury, or cover-up in specific cases, it would have impeached the decisions of the numerous Criminal Division judges in those cases, and, in cases which are still pending, call the convictions into question. Additionally, such findings would implicate the felony review and trial ASAs in those cases, including those who are now sitting judges. Likewise, finding that the SAO's refusal to prosecute

the torturers in the Wilson case was an obstruction of justice would not only implicate the Mayor and the State's Attorney, but also three sitting judges.

## SPECIAL PROSECUTORS' APPEARANCES OF CONFLICT OF INTEREST AND BIAS

*The Special Prosecutors had appearances of conflict of interest and bias in favor of those whom they had been appointed to investigate.*

At the time of the Special Prosecutors' appointment, it was public knowledge that Egan and Boyle had long-standing ties to the Cook County State's Attorney's Office and the Cook County Regular Democratic Organization.

It was not until after the Special Prosecutors' Report was issued, however, that the *Chicago Sun-Times* learned that Egan was the uncle of a violent crimes detective, William Egan, who had worked under Burge at Area 2 from 1982 to 1986. The *Sun-Times* also reported that Egan's grandfather, father, three uncles, two brothers, and a second nephew had all been CPD officers, holding ranks ranging from sergeant to captain and detective. The most troubling familial connection was that with Area 2 Detective Egan, who had participated with Burge and another officer in the 1983 arrest of torture victim Gregory Banks, whose case was investigated by the Special Prosecutors. (*Chicago Sun Times*, August 6, 2006)

Detectives Egan and Burge turned Banks over to the notorious midnight shift headed by Sergeant John Byrne. Banks's co-defendant, David Bates, likewise was turned over to the midnight crew. Both confessed. At their trial in 1985, both testified that they had been beaten repeatedly, suffocated with a plastic bag, and racially taunted by Detectives Byrne and Dignan. (*People v. Banks*, 549 N.E.2d 766 (1989), *People v. Bates*, 642 N.E.2d 774 (1994))

Bates and Banks were convicted, but their convictions were reversed by the Illinois Appellate Court based on the evidence that they had been tortured. (Id.) After prosecutors dismissed the charges against both men, the City settled their civil rights claims for substantial sums. The officer who arrested Bates was an African American detective, Doris Byrd, who said in a sworn statement provided to the Special Prosecutors that the torture of suspects by Burge and the midnight crew was an "open secret" at Area 2 in the early 1980s, and that she often heard screams coming from the interrogation rooms. (Statement of Doris Byrd, November 9, 2004, pp. 9-11, 16-17, 21-24) Nonetheless, the Special Prosecutors found the evidence in the Banks case insufficient to support any criminal charges against Byrne or Dignan.

After the evidence of Egan's possible conflict of interest surfaced, he told several different stories to the media. First, he told the *Sun Times* reporter who broke the story that he had disclosed the information concerning his nephew to Judge Biebel and to Locke E. Bowman, the legal director of the MacArthur Justice Center, an attorney who had sought the appointment of the Special Prosecutors. Judge Biebel did not remember the conversation and Bowman said he "could not imagine" that Egan told him his nephew was an Area 2 detective who worked for Burge. (*Chicago Sun Times*, August 6, 2006)

Egan then told the *Chicago Tribune* that his nephew did not work for Burge and that he had disclosed his nephew's involvement in the Banks case shortly after he was appointed. (*Chicago Tribune*, August 6, 2006) Egan also asserted that he was "certain" that his nephew was a tactical officer rather than a detective working for Burge.

After his nephew's personnel records were obtained, however, Egan said that he might have been "mistaken" when he denied that his nephew was an Area 2 detective. (*Chicago*

*Tribune*, August 8, 2006) Furthermore, he also asserted that he talked to his nephew only "three times in 20 years, always at wakes." (*Chicago Sun Times*, August 7, 2006)

Shortly after Egan made his conflicting statements, an audio tape made by a filmmaker six months after Egan allegedly made his off-the-record disclosures surfaced. During this taped interview, Egan made several additional statements indicative of a pro-Burge bias. When asked what sort of a man Burge was, Egan said a fellow judge had described Burge as "personable" and "hardworking." Egan then volunteered that at the onset of the investigation he had discovered that he had a nephew who had arrested an alleged torture victim.

He said that, if his nephew had anything to do with the alleged torture, he would have to report it to Judge Biebel and "maybe get out of" the investigation. His nephew told him what Egan had been hearing "from everybody" — that Burge was a "great, hard worker" and that his nephew was "only" the officer who arrested Banks. (*Chicago Sun Times*, August 16, 2006)

Hence, from the taped statements and Judge Egan's various statements to the media, it appears that he approved of findings regarding the Banks case, in which his nephew was a possible witness to Burge's involvement in torture. The record also indicates that Judge Egan either did not disclose these facts to Judge Biebel, or, if he did, that his disclosure was incomplete and off the record, and that after the evidence of his conflict of interest and bias was publicly revealed, he repeatedly changed his story to fit the emerging evidence.

Egan and Boyle both also had reputations that apparently made their appointment welcome news at City Hall. According to the *Sun-Times,* Jeffrey Given, a top assistant of Chicago Corporation Counsel Mara Georges, sent Georges this email message:

> By all accounts, Edward Egan and his top assistant, Robert Boyle, are very good choices for special prosecutors. Nick [Trovato, a high level Assistant Corporation Counsel] knows them and John Goggin at Hinshaw [& Culbertson, a law firm representing the

City in torture cases] knows both of them very well. They will likely be fair to the City and the CPD and our guess is that they will not be inclined to turn it into the kind of unfocused witch hunt that the PLO [People's Law Office] and their ilk would ideally push for. (*Chicago Sun Times*, July 31, 2006)

Egan had been an ASA under two Democratic State's Attorneys prior to leaving the office under Republican Ben Adamowski. In private practice, Egan defended one of the police officers charged in the Summerdale scandal in 1961. After Democrat Daniel P. Ward recaptured the State's Attorney's office, Egan returned as Ward's first assistant. With the backing of Richard J. Daley, Egan became a Circuit Court judge and then an Appellate Court judge. In 1976, he left the bench when Daley slated him for State's Attorney against Republican Bernard Carey, who had defeated Edward V. Hanrahan for re-election four years earlier. After losing that election,[26] Egan went into private practice before returning to the Appellate Court in 1988.

Boyle had been Chief of the Criminal Division of the State's Attorney's Office under Hanrahan in 1969 when officers under Hanrahan's direction raided a west side apartment and shot Black Panthers Fred Hampton and Mark Clark to death. In an effort to defend the police action in that case, Boyle, Hanrahan, and First Assistant State's Attorney Richard Jalovec provided photographs purporting to show bullet holes indicating that the Panthers had fired shots. In truth, however, the purported bullet holes were nail heads. (Report of the January 1970 Federal Grand Jury, Northern District of Illinois, p. 16) After Boyle left the State's Attorneys' Office, he entered private practice, and subsequently became a law partner of former Democratic Congressman Morgan Murphy Jr., who "was considered a member of Mayor Richard J. Daley's 'inner circle,'" while his father was "a close associate" of the mayor. (*Chicago Tribune*, February 22, 1970)

---

[26] During the campaign, Egan told a reporter, "Everything I ever got I owe to the State's Attorney's Office." (*Chicago Tribune*, October 31, 1976)

In May of 2005, during the Special Prosecutors' investigation, Boyle, Murphy, and Murphy's son, Morgan Murphy III, were found civilly liable by a Wisconsin jury for mail fraud, securities fraud, embezzlement, racketeering, and theft, and ordered to pay $242 million in damages. The jury found that they had concealed Murphy's alleged business ties to two purported Chicago mob figures, while brokering a potential Kenosha casino deal for the Menominee Indian tribe. (*Milwaukee Journal Sentinel*, May 25, 2005) This case was subsequently settled for $7.5 million. (*Milwaukee Journal Sentinel*, September 29, 2005)

## CONCLUSION AND CALL FOR ACTION

The record strongly suggests that the Special Prosecutors' investigation and resultant Report, which cost the taxpayers of Cook County $7 million, were driven, at least in part, by pro-law-enforcement bias and conflict of interest, were riddled with omissions, inconsistencies, half truths and misrepresentations, and reflect shoddy investigation and questionable prosecutorial tactics and strategies. The Report also failed to address the systemic and racist nature of the dehumanizing physical and psychological abuse, or to identify it as torture, in accordance with the international definition. Additionally, the record suggests that the investigation was neither designed nor intended to develop evidence in support of indictments for crimes not barred by the statute of limitations but rather was designed to avoid embarrassing City, County, CPD, and SAO officials responsible for the torture scandal and cover-up, and protecting the City from civil liability.

Based on the findings set forth above, the undersigned respectfully request that:

- The Cook County Board hold a public hearing to investigate the squandering of public resources by the Special Prosecutors on an investigation that appears to have been flawed by design.
- The U.S. Attorney for the Northern District of Illinois and U.S. Department of Justice conduct an independent investigation into all of the criminal conduct implicated by the evidence outlined above.
- The City of Chicago and the County of Cook establish a fund to provide compensation and treatment for the more than one hundred victims of torture who may be barred from obtaining relief by the statute of limitations.
- The City of Chicago cease expenditure of further public funds to defend Burge and his subordinates in the civil torture cases.[27]
- The Illinois Attorney General agree to new criminal court hearings for persons behind bars who were convicted in whole or in part on the basis of confessions obtained by Burge and his subordinates.
- The Special Prosecutors make public all transcripts, documents, and other materials gathered during their investigation.
- The U.S. Congress, the United Nations Committee Against Torture (CAT), and the Inter-American Commission on Human Rights continue to monitor the City, County and U.S. Government's responses to the above demands.

*The last time before they brought the statement in and had me to talk to them, I come to, and I thought I was dead then because they was lifting me off the floor trying to pump air into me because I wasn't breathing. I remember that. I thought I was dead because all I could see was blackness and I said, man, this is it. I'm gone. When I looked up, they brought me back. I said, man, I'm on a seesaw, here we go again. I can't take no more of this. They did it again. So they asked me some questions, I answered them. I answered more questions. Then I said, man, I ain't going through this no more. So I said, I ain't saying nothing else. So then they put me back through it again, and the last time, I thought that was it. That was it.*

*Torture victim Anthony Holmes*
*Statement Provided to Special Prosecutors*

[27] Freedom of Information Act and other public documents establish that, as of March 15, 2007, the City of Chicago has paid $8.5 million to private lawyers to defend Burge, his men, and the City in the Burge torture cases, and another $500,000 to fire him. Over the last six months alone, the City paid out nearly $1 million to defend Burge and itself in the five pending civil torture cases. A summary of these expenditures can be found in Appendix D.

RESPECTFULLY SUBMITTED BY: April 24, 2007
(In Alphabetical Order)

**INDIVIDUALS**

Christina Abraham, Civil Rights Coordinator, Council on American-Islamic Relations (CAIR)

Bill Allison, Clinical Professor of Law, University of Texas School of Law, and Director, Texas Center for Actual Justice

Albert Alschuler, Professor of Law, Northwestern University School of Law

Anthony Amsterdam, University Professor, New York University School of Law

Kimball Anderson, Partner, Winston & Strawn

David A. Ansell, MD, MPH, Chief Medical Officer, Rush University Medical Center

Shawn Armbrust, Executive Director, Mid-Atlantic Innocence Project

Barbara R. Arnwine, Executive Director, Lawyers' Committee for Civil Rights Under Law, Washington, DC

Professor Michael Avery, Professor of Law, Suffolk Law School, co-author, Police Misconduct: Law and Litigation; immediate past president, National Lawyers Guild

Sandra L. Babcock, Associate Clinical Professor and Clinical Director, Center for International Human Rights, Northwestern University School of Law

Cherif Bassiouni, Distinguished Research Professor of Law, DePaul University College of Law, President of the International Human Rights Law Institute; Co-chair, Committee of Experts on the Draft Convention on the Prevention and Suppression of Torture; United Nations Sub-Committee on the Prevention of Discrimination and Protection of Minorities

David Bates, Chicago Police Torture Victim

Rev. Don Benedict, Founder, Protestants for the Common Good

Adele Bernhard, Professor of Law, Pace Law School

Timuel Black, Professor Emeritus, Chicago City Colleges

Karen Blum, Professor of Law, Suffolk Law School and Co-author, Police Misconduct: Law and Litigation

Jane Bohman, Executive Director, Illinois Coalition to Abolish the Death Penalty

Nancy Bothne, former Midwest Regional Director, Amnesty International

Locke E. Bowman,* Legal Director, MacArthur Justice Center

David Bradford, Partner, Jenner & Block

Tommy Brewer, former Assistant Special Prosecutor, Burge Investigation

Stephen B. Bright, Founder, Southern Center for Human Rights; Lecturer in Law, Yale Law School

John C. Brittain, Legal Director, National Lawyers Committee for Civil Rights under Law; former Dean, Thurgood Marshall School of law, Texas Southern University; Former President, National Lawyers Guild

Rev. George W. Brooks, Director of Adult Spirituality, Infant Jesus of Prague Parish; Former Director of Advocacy Kolbe House, the prison ministry of the Archdiocese of Chicago

Justin Brooks, Executive Director, Institute for Criminal Defense Advocacy & California Innocence Project, California Western School of Law

Dorothy Brown, Circuit Court Clerk and recent candidate for Mayor of the City of Chicago

John Carlos, 1968 Olympian and Bronze Medal Winner

Douglass W. Cassel, Director, Center for Civil and Human Rights, Notre Dame Law School

Leonard Cavise, Professor of Law, DePaul University College of Law

David Cerda, former President of the Hispanic Bar Association and Hispanic Lawyers Association of Illinois

Coltrane Chimurenga, General Secretary December 12th Movement International Secretariat

Paul J. Ciolino, Past President, National Association of Legal Investigators

Mardge Cohen, MD, Director of Women's HIV Research, CORE Center

Robert L. Cohen, MD, Federal Appointment Monitor, Prison Medical Care

Marjorie Cohn, International Human Rights Professor, Thomas Jefferson School of Law; President, National Lawyers Guild; U.S. representative to executive committee, American Association of Jurists

Edwin Colfax, Director of State Reform Campaigns, The Justice Project

Ron Crawford, Former Chicago Police Officer and Member, African-Americans for Public Safety

Jerry Crawley, Former Chicago Police Officer

Lisa A. Crooms, Professor of Law, Howard University School of Law

Jeffrey Cummings, partner, Miner, Barnhill & Galland

Danny K. Davis, U.S. Representative, Seventh District of Illinois

Madeline DeLeone, Executive Director, The Innocence Project, Benjamin N. Cardozo School of Law

Leon Despres, former Fifth Ward Alderman; Partner, Despres, Shwartz & Geoghehan; author, *Challenging the Daley Machine: A Chicago Alderman's Memoir*; and recipient, Benton Medal for Distinguished Public Service

Michael E. Deutsch, attorney for Palestinian-American torture victim Muhammad Salah

Bernardine Dohrn,* Director, Children and Family Justice Center, Northwestern University School of Law

Steven Drizin, Legal Director, Center on Wrongful Convictions, Northwestern University School of Law

Mary Fabri, Director, Torture Treatment Services & International Training, Marjorie Kovler Center of Heartland Alliance

James Fennerty, Past President, Chicago Chapter, National Lawyers Guild

Kurt Feuer,* Attorney for Madison Hobley

Keith Findley, Co-founder and Co-director, Wisconsin Innocence Project

Alison Flaum, Clinical Professor of Law, Northwestern University School of Law

Aviva Futorian, Chair, Long-Term Prisoner Policy Project

Craig Futterman, Clinical Professor of Law, Mandel Legal Aid Clinic, University of Chicago Law School

Jenni Gainsborough, Director, Washington Office, Penal Reform International

Thomas H. Geoghegan, Partner, Despres Shwartz & Geoghegan.

Thomas Geraghty, Director, Bluhm Legal Clinic, Northwestern University School of Law

Mark Godsey, Professor of Law, University of Cincinnati College of Law; Faculty Director, Ohio Innocence Project

William Goodman, Legal Director, Center for Constitutional Rights (CCR)

Jennifer Greenberg, Executive Director, Florida Innocence Initiative, Inc.

Reverend Larry L. Greenfield, Executive Minister, American Baptist Churches of Metro Chicago

Samuel R. Gross, Thomas and Mabel Long Professor of Law, University of Michigan Law School

Susan Gzesh,* Director, Human Rights Program, University of Chicago

Rick Halperin, Professor of History, Southern Methodist University; Chair, Amnesty International U.S.A.

Ron Hampton, Executive Director, National Black Police Association

Pat Hill, Executive Director, African American Police League

Madison Hobley, Chicago Police Torture Victim

Charles Hoffman,* Board Member, Illinois Coalition to Abolish the Death Penalty

Anthony Holmes, Chicago Police Torture Victim

Constance A. Howard, Illinois State Representative

Stanley Howard, Chicago Police Torture Victim

Margaret Huang, Director, U.S. Program, Global Rights

Reverend Jesse L. Jackson Sr., Founder and President, Rainbow PUSH Coalition

Reverend Paul Jakes Jr., Pastor, Old St. Paul Missionary Baptist Church

Mary Johnson, Named Petitioner, Motion for Appointment of a Special Prosecutor, and mother of torture victim Michael Johnson

Scott Kamin, Attorney at Law

Lawrence Kennon,* Named Petitioner, Motion for Appointment of a Special Prosecutor; Past President, Cook County Bar Association

Rashid Khalidi, Edward Said Professor of Arab Studies, Middle East Institute, Columbia University

Nancy Kurshan, MSW, Chicago Public Schools Social Worker

Richard A. Leo, Associate Professor of Law, University of San Francisco School of Law.

James S. Liebman, Simon H. Rifkind Professor of Law, Columbia Law School.

Bert B. Lockwood Jr., Distinguished Service Professor, University of Cincinnati School of Law and Director, Urban Morgan Institute for Human Rights,

Jon Loevy, attorney for Stanley Howard and Madison Hobley

Professor Jose E. Lopez, Executive Director, Puerto Rican Cultural Center.

Andrea Lyon, Dean, Clinical Studies, DePaul College of Law

Joseph Margulies, MacArthur Justice Center, Northwestern University School of Law; author, *Guantanamo, and the Abuse of Presidential Power*

Lawrence C. Marshall, Associate Dean for Public Service and Clinical Education and Director of Clinical Education, Stanford Law School

Robert J. Marx, Rabbi Emeritus, Congregation Hakafa

Ezra McCann, Retired Captain, Chicago Fire Department

Calvin S. Morris, Ph.D., Executive Director, Community Renewal Society; co-President, Justice Coalition of Greater Chicago

Imam Malik Mujahid, Chairman, Council of Islamic Organizations of Greater Chicago

Michael McConnell, Regional Director, American Friends Service Committee (AFSC)

Judson H. Miner, partner, Miner, Barnhill & Galland and former Corporation Counsel, City of Chicago

Jeanne Mirer, Secretary General, International Association of Defense Lawyers

Joey L. Mogul,* attorney for Darrell Cannon and Leroy Orange

Nike Mourikes, M.D., County Bureau of Health Services

Bessie Dutton Murray, Distinguished Professor of Law Emeritus and Senior Scholar, Center for Human Rights, University of Iowa

Clyde Murphy, Director, Chicago Lawyers Committee for Civil Rights Under Law

Prexy Nesbitt, Adjunct Professor, Columbia College

Peter Neufeld, Co-founder, Innocence Project, Benjamin N. Cardozo School of Law

Charles Ogletree, Harvard Law School Jesse Climenko Professor of Law, and Founding and Executive Director of the Charles Hamilton Houston Institute for Race and Justice

Leroy Orange, Chicago Police Torture Victim

Matthew Piers, partner, Hughes, Socol, Piers, Resnick & Dym, Ltd, and former Deputy Corporation Counsel for Litigation, City of Chicago

Mary Powers,* Named Petitioner, Motion for Appointment of a Special Prosecutor

David Protess, Director, The Medill Innocence Project, Northwestern University

Coy Pugh, former Illinois State Representative

Michael L. Radelet, Chairman, Department of Sociology, University of Colorado

Frank Ralph, attorney for Petitioners who Secured the Appointment of the Special Prosecutors

Vanessa Ramos, Secretary General of the American Association of Jurists

Jane Ramsey, Executive Director, Jewish Committee on Urban Affairs; co-President, Justice Coalition of Greater Chicago

Kathleen Ridolfi, Executive Director, Northern California Innocence Project

Andrea J. Ritchie, Attorney at Law, New York City

Don Rose, Political Consultant

Jon Rosenblatt, attorney for Stanley Howard and Madison Hobley

David A. Rothstein, M.D. and researcher and author, medical ethics and torture

Len Rubenstein, Executive Director, Physicians for Human Rights

Leonard S. Rubinowitz, Professor of Law, Northwestern School of Law

Kristi Rudelius-Palmer, Human Rights Center, University of Minnesota

David Rudovsky, Senior Fellow, University of Pennsylvania Law School; Co-author, Police Misconduct: Law and Litigation

Bill Ryan, Publisher, Stateville Speaks newspaper and Citizens for Earned Release

Howard Saffold, founder, Positive Anti-Crime Thrust

Carl Safford, President of Blacks In Government, South East Wisconsin Chapter

Stephen Saloom, Policy Director, The Innocence Project, Benjamin N. Cardozo School of Law

Steven Saltzman,* Editor, Civil Rights Litigation and Attorney Fees Annual Handbook

Reverend Al Sampson, Pastor, Fernwood United Methodist Church; President, Chicago Metropolitan Council of Black Churches.

Jorge Sanchez, Attorney at Law

Austin D. Sarat, William Nelson Cromwell Professor of Jurisprudence and. Political Science. Amherst College

Barry Scheck, Co-founder, The Innocence Project, Benjamin N. Cardozo School of Law; Past President, National Association of Criminal Defense Lawyers

Gordon Schiff, MD, Cook County Hospital, Professor of Medicine Rush University

Ron Shansky, M.D. and former Medical Director, Illinois Department of Corrections

Brenda Shead, former Chicago Police Sergeant; President, The Guardians Police Organization

Dick Simpson, Chair, Department of Political Science, University of Illinois at Chicago; Former Alderman, Forty-fourth Ward

Virginia E. Sloan, President, The Constitution Project

Jean Maclean Snyder, Attorney at Law

Cynthia Soohoo, Director, Bringing Human Rights Home, Human Rights Institute, Columbia Law School

Brian Spears, Civil Rights and Police Brutality Attorney, Atlanta

Colin Starger, Staff Attorney, Innocence Project, Benjamin N. Cardozo School of Law

Robert Starks, Professor, Education and Development, Northeastern Illinois University

Randolph N. Stone, Clinical Professor of Law, University of Chicago Mandel Legal Aid Clinic; former Public Defender of Cook County

G. Flint Taylor Jr., * Attorney for Andrew Wilson, Darrell Cannon, Leroy Orange, and Several Other Chicago Police Torture Victims

J. Samuel Tenenbaum,* Assistant Clinical Professor of Law, Bluhm Legal Clinic, Northwestern University School of Law

Studs Terkel, Author/Interviewer

John Terzano, President, The Justice Project, Washington, D.C.

Doug Tjapkes, Founder, Innocent!

Jeffrey Urdangen, Clinical Professor of Law, Northwestern University School of Law

Mario F. Venegas, Ph.D. and Chilean Torture Survivor

Bill "Doc" Walls III, Director, Committee for a Better Chicago; recent candidate for Mayor of the City of Chicago

Rob Warden,* Executive Director, Center on Wrongful Convictions, Northwestern University School of Law

Roger S. Wareham, Esq., International Secretary-General of the International Association Against Torture

Steven Weinberg, Author of Center for Public Integrity Report on Prosecutorial Misconduct; Former Executive Director, Investigative Reporters & Editors

Burns H. Weston, Bessie Dutton Murray Distinguished Professor of Law Emeritus and Senior Scholar, Center for Human Rights, The University of Iowa

Steve Whitman, PhD., Health Researcher

Standish Willis, National Conference of Black Lawyers

Audra Wilson, Director of Diversity Education & Outreach, Northwestern University School of Law

Wilbourne Woods, Former Chicago Police Officer

Quentin Young, M.D., former Medical Director, Cook County Hospital

Marvin Zalman, Professor, Department of Criminal Justice, Wayne State University

Cliff Zimmerman, Dean of Students, Northwestern University Law School

Howard Zinn, Professor Emeritus, Department of Political Science, Boston University; Historian and author, *A People's History of the United States*

**ORGANIZATIONS**

African American Police League
American Association of Jurists
American Friends Service Committee, Chicago Chapter
American Friends Service Committee, National Committee on Criminal Justice
Amnesty International U.S.A., Midwest Regional Office
Amnesty International, Group 50, Evanston, Illinois
The Association in Defense of the Wrongly Convicted
Blacks In Government, Southeast Wisconsin Chapter
Black People Against Police Torture
Bluhm Legal Clinic, Northwestern University School of Law
California Innocence Project
Campaign to End the Death Penalty
Center on Wrongful Convictions
Centro Sin Fronteras
Center for Constitutional Rights (CCR)
Chicago Committee Against Police Torture
Chicago Committee to Defend the Bill of Rights
Children and Family Justice Center, Northwestern University Law School
Christian Council on Urban Affairs
Citizens Alert
The Committee For A Better Chicago
Community Renewal Society
Cook County Bar Association
Council on American-Islamic Relations (CAIR)-Chicago
The Council of Islamic Organizations of Greater Chicago (CIOGC)
Crossroads Fund
December 12th Movement International Secretariat
Eighth Day Center for Justice

Florida Innocence Initiative
Global Rights
Greensboro Justice Fund
The Guardians Police Organization
Illinois Coalition to Abolish the Death Penalty
Illinois Association of Criminal Defense Lawyers (IACDL)
The Innocence Project, Benjamin N. Cardozo School of Law
International Association Against Torture
International Association of Defense Lawyers
Jewish Council on Urban Affairs
MacArthur Justice Center
Midwest Committee for Human Rights
National Alliance Against Racist and Political Repression
National Association of Black Law Enforcement Officers, Inc.
National Black Police Association
National Boricua Human Rights Network
National Conference of Black Lawyers
National Lawyers Guild
National Lawyers Guild, Chicago Chapter
National Coalition on Police Accountability (NCOPA)
National Police Accountability Project of the National Lawyers Guild
Northern California Innocence Project
People's Law Office
Positive Anti-Crime Thrust (PACT)
Protestants for the Common Good
Rainbow PUSH Coalition

**Iyabo Olatokunbo WILLIAMS, A# 040-392-119**

**CERTIFICATE OF SERVICE**

On July 1, 2019, I, Valeria Vera, caused to be served the within:

Cover Letter;

Respondent's Exhibits in Support of Application for Protection Under Convention of Torture; and

Respondent's Witness List.

On the opposing counsel via:

- ☐ Hand delivery;
- ☒ First Class Mail;
- ☐ Courier Service;
- ☐ Electronic Mail;

To the following party/parties and addresses:

Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of the Chief Counsel
P.O. Box 26449
San Francisco, CA 94126-6449

Date: 07/01/19 Signed: _____